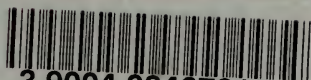


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INSOLVENT ACT OF 1864.

John Popham

IN THE MATTER OF

ANDREW MACFARLANE ET AL.,

INSOLVENTS;

AND

ANDREW BUCHANAN STEWART,

OFFICIAL ASSIGNEE.

PART I.

PRELIMINARY INVESTIGATION.

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F5012
1868
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Montreal :

PRINTED BY JOHN LOVELL, ST. NICHOLAS STREET.

1868.

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The EDITH *and* LORNE PIERCE
COLLECTION *of* CANADIANA



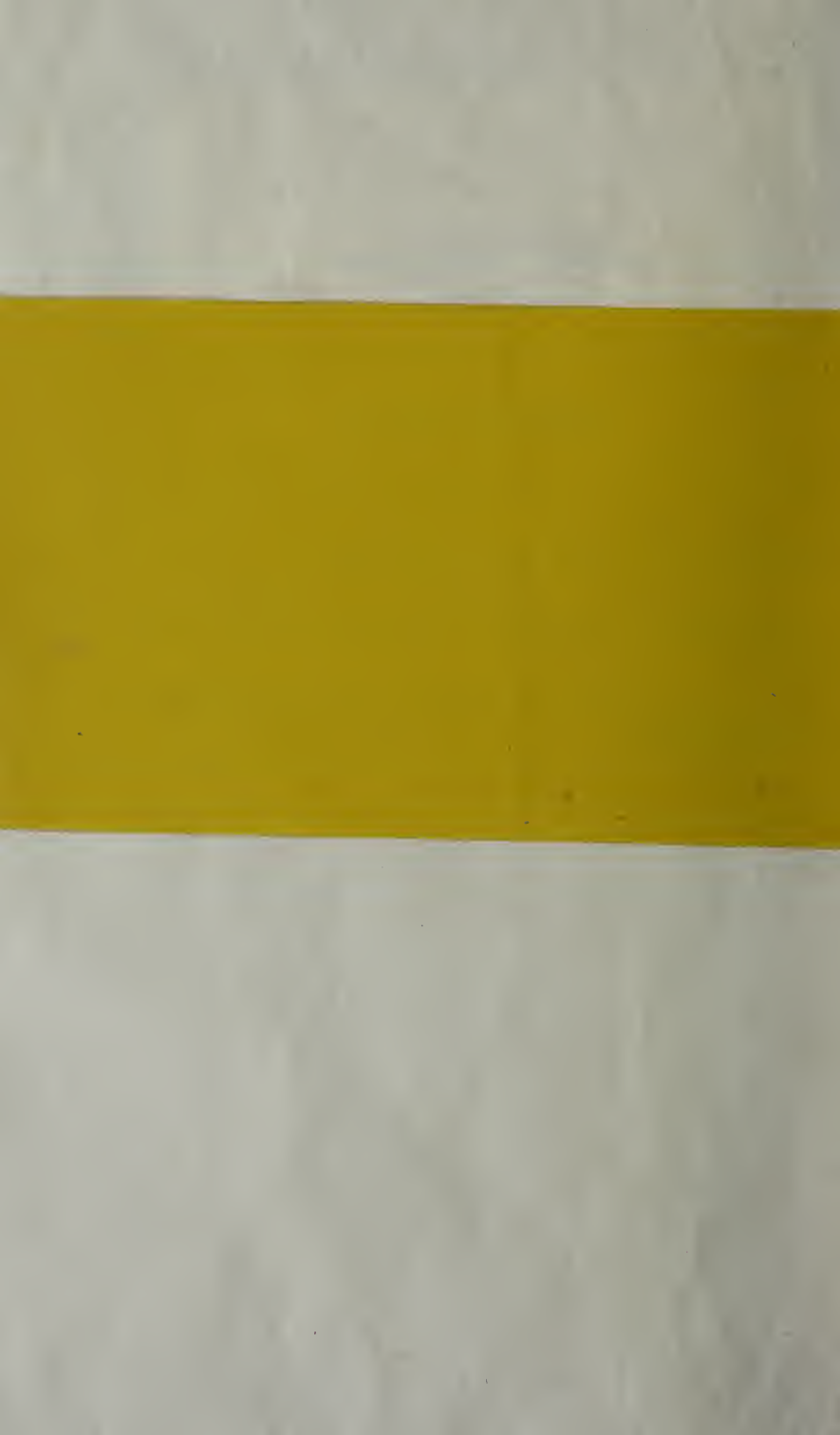
Queen's University at Kingston

IMPORTANT ERRATA.

Page 15, line 12, for "These were," read "There were."

Page 23, line 9, for "Seventy-nine thousand," &c., read "Twenty-nine thousand," &c.

Page 39, line 6, for "Deposition of Robert Macfarlane," read "Deposition of Andrew Macfarlane."



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CANADA
Province of Quebec, } IN INSOLVENCY.
DISTRICT OF MONTREAL.

INSOLVENT ACT OF 1864.

IN THE MATTER OF

ANDREW MACFARLANE, ET AL.,
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AND

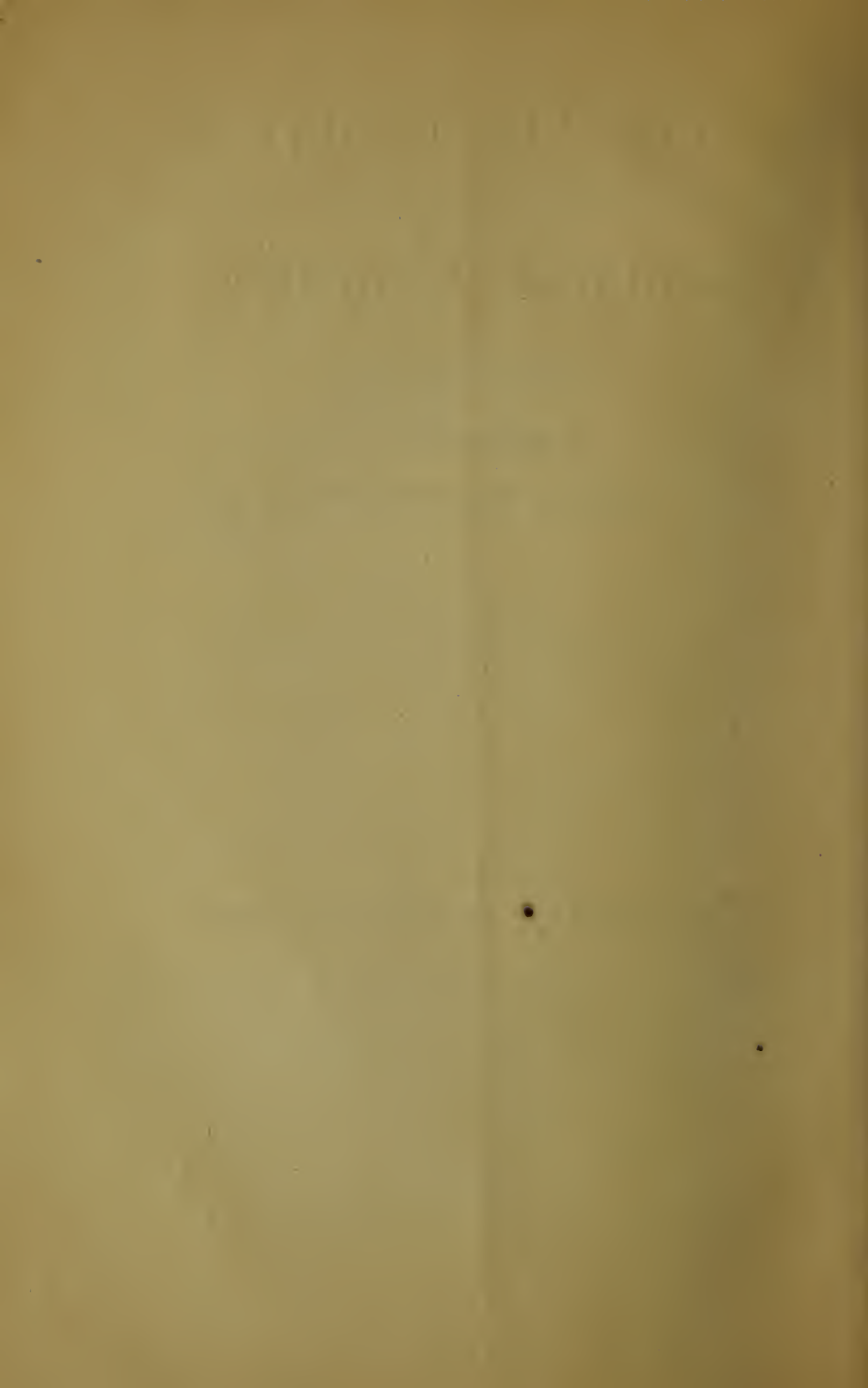
ANDREW BUCHANAN STEWART,
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CANADA.
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DISTRICT OF MONTREAL.

IN INSOLVENCY.

INSOLVENT ACT OF 1864.

IN THE MATTER OF :

ANDREW MACFARLANE *et al.*,
Insolvents ;

AND

ANDREW BUCHANAN STEWART,
Official Assignee.

PRELIMINARY INVESTIGATION.

On the 20th day of April, 1868, D. Girouard, Esquire, attorney for A. B. Stewart, Esquire, assignee to the said Insolvents, presented a petition to His Honor M. Justice Mondelet, setting forth satisfactory reasons for an order from His Honor to examine the Insolvents and other witnesses as to the estate and effects of the Insolvents. S. Bethune, Esquire, Q. C., appeared for the Insolvent. The following is a true copy of the evidence.

DEPOSITION OF GEORGE PARYS.

On this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, personally appeared before the Hon. Charles Mondelet, one of the Judges of the said Superior Court, George Parys of the city of Montreal, accountant, on behalf of said Assignee, who being duly sworn, on the Holy Evangelists, : doth depose and say, I have been the Bookkeeper of the Insolvents for about eight or nine years up to the time of their failure.

Question.—In what state did you find the books of Andrew Macfarlane and Company when you first entered their employ ?

Answer.—Pretty fairly kept.

Question.—What do you mean by the words “ Pretty fairly kept ? ”

Answer.—That firms paying a small salary cannot, of course, as a rule, have people of the same ability as firms in which first class talents are employed.

Question.—Were those books then kept according to the exigencies of the dealings of the said Andrew Macfarlane and Company ?

Answer.—They were kept to answer all necessary purposes.

Question.—Were they balanced ?

Answer.—The word “ balance ” implies a great many things. There were trial balances made, and things kept as they generally are in mercantile offices.

Question.—What do you mean by those trial balances ?

Answer.—In books kept by double entry, whatever amounts are charged to any particular account go to the credit of some other particular account, so that whenever a set of books are posted by adding up the different accounts in a Ledger, the debits put in one column and the credits in another, the amount should exactly balance. I believe the books of Andrew Macfarlane and Company were so balanced when I entered their employ.

Question.—Take communication of the books now shewn to you, and state whose books they are ?

Answer.—Those books belong to the firm of Andrew Macfarlane and Company.

Question.—Do they comprise all the books of the Insolvents ?

Answer.—They apparently comprise all the books lately used by the firm.

Question.—What do you mean by the words “ lately used ? ”

Answer.—I mean they were used these three or four years, or more.

Question.—Where are the books used before the said last three or four years ?

Answer.—At the time I left the office of Andrew Macfarlane and Company in February last, I believe all books having reference to the business of the firm were in their office.

Question.—Have you any knowledge of the books that were delivered to the Assignee of the Insolvents, and were all the books delivered to the said Assignee?

Answer.—I was not present at the time of the delivery, and only saw the books afterwards in the Assignee's office.

Question.—Are the books now in Court all the books you saw in the Assignee's office?

Answer.—They appear to comprise them all.

Question.—Do they comprise the books that were used three or four years ago?

Answer.—They do, with the exception of such books as sales book, containing the details of bills of parcel sold, and which, I presume, are at the office of the Insolvents.

Question.—Amongst those books at the office of the Insolvents, is there not a cash book?

Answer.—The only cash books they had are the two which are now in Court.

Question.—Do you swear positively that there is no other cash book or cash books than those now in Court?

Answer.—There never was any other cash book kept during the time I was in the firm than the two cash books now produced, which were both kept by myself from the time I entered the employment of Andrew Macfarlane and Company.

Question.—Did said firm keep also daily blotter cash-book or cash-books?

Answer.—There was a book kept in which cash sales were entered and which is now in Court, and marked No. 7 cash-sales.

Question.—Take communication of the cash book No. 5, and say whether it is wholly a genuine cash-book of the Insolvents?

Answer.—It is. The book was ordered the same time the new set of books was opened. The Ledger and Journal were ordered at Lovell's, and the cash book No. 5 was ordered from Tuttle.

Question.—Was this book written day by day and not at the same time?

Answer.—It was written day by day, and not at the same time.

Question.—How is it then, that that cash-book is entirely written in the same hand writing, with the same ink, and without any erasures whatever?

Answer.—Because the same ink was used for years in the office, I mean the same quality of ink, and will be found in the other books as well as in the cash-book.

Question.—Look at cash-book No. 4 at pages written by yourself, and how is it that these pages are not written like those in cash-book No. 5 ; for instance there are many entries made by other hands in cash-book No. 4, and in it also there are many erasures like cash-books generally.

Answer.—Cash-Book No. 4, although nearly all in my own hand-writing had occasionally a few entries made by other parties during my absence from the office, this I put a stop to when opening a new set of books, and if any money was received while I was at dinner, or otherwise absent, a memorandum was written on a slip of paper which I entered on my arrival.

Question.—Are the following books, to wit : Journal No. 2, Ledger No. 1, and Bill Book No. 11, genuine and not copies of other books, not produced ?

Answer.—They are genuine, were ordered by myself years ago, were put in use from the date which they bear, and were regularly written up in the usual manner for years back.

Question.—Can you find in those books any erasure ?

Answer.—I am not aware of any.

Question.—Are they not all written in the same hand-writing ?

Answer.—They are all in my hand-writing.

Question.—Are they not also written with the same kind of ink ?

Answer.—Yes they are. They were I believe all written with Todd's Perth ink.

Question.—Were balance sheets made by the said Andrew Macfarlane & Co. ?

Answer.—I used to make trial balances, and presume some of them will be found in the premises lately occupied by the firm.

Question.—Are you then aware that those balance sheets were not handed over to the assignee ?

Answer.—As already stated, I do not know what was delivered to the assignee, not being present at the same time of the delivery.

Question.—Have you not been asked to get any balance sheet that the insolvents might have, and what did you answer to the assignee, who had made that request ?

Answer.—I was asked by Mr. Lindsay, who is employed by the creditors to look into the affairs of the Insolvents' Estate, if I could not procure him a balance sheet, I answered I thought I could and have no doubt still that I would be able to do so, but as I have my own affairs to attend to, and am not paid by any body connected with this estate, I do not consider it necessary to give myself trouble for other people's business.

Question.—Were you not promised payment by the assignee for all the trouble you might give yourself?

Answer.—He may have done so. I believe he did, but I paid no attention to it.

Question.—When was the last balance sheet made?

Answer.—I have no recollection, not having the document before me.

Question.—Take communication of the Ledger No. 1, now in Court and can you not tell by referring to it, when the last balance sheet was made?

Answer.—The Ledger does not show when balance sheets are made, but by looking at that Ledger, I find that the last time I balanced the books, was on the thirtieth of November, eighteen hundred and sixty-six. I presume that all balance sheets and all other papers not before the Court are in the office lately occupied by the Insolvents.

Question.—Who was the cashier of the house of Andrew Macfarlane & Co.?

Answer.—The cash was generally received by me, and by me written into the Cash-book, but the amounts were daily handed over to Andrew Macfarlane, and the deposits were made by the said Andrew Macfarlane. I was not in possession of the cash. I made the entries from his statements and from what I knew.

Question.—Do you find among the books now in Court the Bank pass-books of the said firm, shewing the cash deposited?

Answer.—They are not here, but I believe are in the hands of the assignee.

Question.—When either of the parties was taking cash for his private use, was any entry made in the books accordingly?

Answer.—At the end of each month Mr. Macfarlane used to give me a statement on a slip of paper, and I entered the amount in the Cash-book.

Question.—How is it that Mr. Andrew Macfarlane is the only partner charged, and no entry is found in the books with regard to the expenses of Robert Macfarlane ?

Answer.—From what I know I believe the money taken by Robert Macfarlane for his private use, was included at the end of each month in the amount so charged to Andrew Macfarlane.

Question.—What makes you believe so ?

Answer.—From the fact that the private accounts against Robert Macfarlane were frequently paid by his father, and I believe by him included in his own expenses.

Question.—Look at Ledger No. 18, pages 254, 270, 388, 484, and 568, and explain the meaning of the entries therein made “By private Ledger” ?

Answer.—Those entries were made before the time I entered the employ of the said firm, and I never had occasion to refer to them any way. I never saw that private Ledger.

Question.—Look at page 290 of the Cash-book No. 5, having reference to an entry made in November, eighteen hundred and sixty-seven, as follows :—“By charges—Rent of store from January 1, 1864, to January 1, 1868, four years at £600, £2,400. Interest £280 10s., altogether £2,680 10s., and explain the meaning of the same ?

Answer.—I have never seen the articles of co-partnership between Andrew Macfarlane and his son, but as the store was the private property of Andrew Macfarlane, I was told by both of the Macfarlanes that the firm was to pay a yearly rent of six hundred pounds for the store, and made the entry accordingly ; and when I made that entry I took it for granted that Andrew Macfarlane had taken from the cash the said sum of two thousand six hundred and eighty pounds and ten shillings.

Question.—Did you keep two Cash-books, and for what purpose ?

Answer.—In January eighteen hundred and sixty-one, the old Ledger, now in Court, being filled up, it was necessary to open a new set of books. In the old Ledger were many customers' accounts, which, as the firm did not wish to continue giving them credit, I thought it would be filling up the new Ledger with names that were useless. I therefore kept on the old set of books in

connection with those old accounts, and opened fresh accounts in the new book.

Question.—By looking at the entries made in the Cash-book No. 4, made since the opening of the new set of books, a great many bills receivable are mentioned, and what is the meaning of those entries?

Answer.—The bills receivable alluded to were accommodation notes, which the firm got from different parties to facilitate the finances of their business. The accommodation paper or discount is kept in the old Cash-book No. 4, and not in the new Cash-book No. 5.

Question.—Look at Cash-book No. 4, January eighteen hundred and sixty-six, and explain how it is that one sheet is torn out?

Answer.—The book in question had belonged I believe, to the old estate of Radenhurst, Turnbull & Co., and the sheet spoken of as torn out, was never torn by me at the time I made the entries, nor could it possibly have been torn by anybody during the time I was in the employ of the firm.

Question.—Look at the Cash-book No. 4, April 1867, and explain what you know about the following entries: “By real estate, sundries per list, £3,758 2s. 7d.”; and also “By profit and loss, per list, £4,613 13s.”; and finally, “By profit and loss, returned, J. T., £403 2s. 6d.”

Answer.—The first two entries were made by me, copied from a book which was handed me by Mr. Macfarlane, senior, in which the details of these entries were to be found. I simply added up the total, and made the entry under the proper heading. As to the entry marked “Returned, J. T.,” I cannot recollect whether it was contained in the same book in which were the other items alluded to.

Question.—Where is that book?

Answer.—I do not know—The last time I saw it, was lying on my desk, in the office of the firm.

Question.—What kind of a book was it, and for what purpose was it kept?

Answer.—It had, I believe, originally been a pass book of the old Savings Bank, of which Mr. Eadie was Manager. I did not keep the book myself; but it appeared to be a private memorandum. I think Mr. Andrew Macfarlane himself kept that book.

Question.—By memory, can you not give a few details with regard to the entries “Real Estate” and “Profit and Loss”?

Answer.—As the entries were made long ago, I cannot recollect what the details were.

Question.—Why did you make these entries under the head mentioned above?

Answer.—Because, I suppose, the accounts mentioned were the proper ones to charge the amounts to.

Question.—Is it usual and customary to charge to profit and loss in the Cash book?

Answer.—Certainly — It depends upon the nature of the entry.

Question.—Can you find any other entry “to Profit and Loss” in the Cash book, other than those above referred to?

Answer.—It would take considerable time to look over every page, but I am not aware of any other entry.

Question.—At the time you made those entries, were you perfectly aware of their nature and bearing?

Answer.—I simply made the entries from the book already mentioned, without troubling myself to ask the particulars.

Question.—Look at the stock book, page 72, and state if that page contains a recapitulation of the stock on hand, on the thirtieth of November, eighteen hundred and sixty-six?

Answer.—I believe it does, and shows that the stock on hand was worth £18,804 4s 1d, currency.

Question.—What is the meaning of the alteration made in that entry, by substituting “sterling” for “selling,” and so changing the “selling” prices into “sterling” prices?

Answer.—The stock book alluded to, as will be seen by reference to the merchandize account in the ledger, was meant to show a stock of £18,804 4s 1d, currency—any memoranda made with reference to it, have nothing to do with the legitimacy of the books.

Question.—Who made that alteration, and for what purpose was it made?

Answer.—I cannot say who made the alteration.

Question.—Do you know for what purpose this alteration was made?

Answer.—At the time the firm was reported to be in difficulties, some parties I believe called on Mr. Macfarlane, and questioned

him as to how his business stood. I was not present at any such conversation, but presume that any statements so made were with a view of obliterating from the mind of the public, all doubts as to the solvency of the firm—I was so told in eighteen hundred and sixty-seven, but I cannot tell what month. I do not recollect all the parties who made those inquiries, but I remember Mr. Lugsdin, Manager of the Mercantile Agency.

There was a statement given to Mr. Lugsdin, shewing, or purporting to show, the affairs of Andrew Macfarlane & Co.

Question.—When, and by whom was that statement prepared?

Answer.—If I recollect right, it was roughly sketched off in a hurry by myself, sometime in the spring of 1867.

Question.—Was that statement a correct one?

Answer.—I attached no importance whatever to that statement, as I did not see what matter it made to Mr. Lugsdin or the Mercantile Agency, as they were not creditors of Andrew Macfarlane and Company.

Question.—Please answer directly to my question, and state if the statement you furnished was a correct one?

Answer.—I have already stated that the statement in question was a mere hurried sketch without much reference to correctness,—as it was simply for the Mercantile Agency. The firm of Andrew Macfarlane & Co. were subscribers to the Mercantile Agency for general information.

Question.—When you refer to the Mercantile Agency for information, do you expect correct or incorrect information?

Answer.—We got the usual reports which they furnish to subscribers.

Question.—Who delivered the statement to Mr. Lugsdin?

Answer.—I did not see it delivered, but I believe it was so delivered by Mr. Andrew Macfarlane.

Question.—Did Mr. Andrew Macfarlane ascertain the correctness or incorrectness of that statement?

Answer.—He himself is the proper party to answer that question, I do not know personally whether he did or not. That statement was, I think, prepared in my own handwriting.

Question.—Do you recollect the amount the stock on hand on the 30th November 1866 was put in at?

Answer.—As I have not the statement before me, I cannot recollect the figures.

Question.—Do you recollect that you put it in at £28,206 6. 1. or thereabouts ?

Answer.—As already stated, not having the statement before me I cannot remember.

Question.—Look at Ledger No. 1. page 5 and state what is the amount of the stock on hand in November 1866 ?

Answer.—It appears to be £14,800 currency.

Question.—How do you account for the difference between the amount laid down in the stock-book and the amount laid down in the Ledger ?

Answer.—Not having looked at those entries for some time, I cannot state the cause of the difference from memory, but I have no doubt of the accuracy of the entry in the Ledger, but if I am allowed sufficient time I shall answer correctly,—and further the Deponent sayeth not, and the deposition having been read to him, he declares it contains the truth, persists therein and hath signed, and the Enquête is adjourned till to-morrow.

(Signed)

GEORGE PARYS.

Sworn taken and acknowledged
before us at Enquête the
day, month and year first
above written.

(Signed)

CHARLES MONDELET, J.

Re-appearing this thirtieth day of April, eighteen hundred and sixty eight, the witness continues his deposition as follows :

Question.—Can you answer this morning to the question upon which the examination was adjourned yesterday ?

Answer.—You are asking me questions which I presume have been carefully studied, and as I have had nothing to do with the books of Andrew Macfarlane and Company, since I left their employ, nor have looked at the books since the question was asked me yesterday, it is difficult to recollect at a moment's notice details of transactions which occurred a long time ago. It is however possible, and I am simply speaking of what perhaps was done at the time, that although the stock as taken in the Stock Book

showed the amount to be what is therein stated, it may have been when balancing the books valued at less than the amount stated in the stock-book, being made as an allowance for depreciation in value of old stock, &c., &c.

Question.—By looking at the books now in Court, can you not give a full and precise explanation of the difference in question between the stock-book and the Ledger?

Answer.—I cannot do so any more than I have already stated.

Question.—Can you explain the addition made in the stock-book in pencil at the bottom of the stock sheet thirtieth November 1866, page 72, and worded as follows: “add. 50 per cent to £18,804 4s. 1d. to wit £9,402 2s. 0d., cost cy. £28,206 6s. 1d.?”

Answer.—This is a mere memorandum in pencil, and as will be seen had no reference whatever to any entry ever made in the books.

Question.—Are those additions in your own hand writing and when were they made?

Answer.—They were written by me but I cannot recollect the date, but as far as I can speak from memory, they were made in spring, 1867.

Question.—Did you not make those additions when you were asked by the Mercantile Agency to prepare a statement?

Answer.—I do not recollect the precise details, but there must have been some cause for making this pencil memorandum at the time it was done.

Question.—State the cause.

Answer.—The manager of the Mercantile Agency called upon Mr. Macfarlane and asked for a statement of his affairs. I cannot speak positively as to whether the memorandum in pencil alluded to was made for the purpose of showing Mr. Lugsdin the position of the stock of the firm or not, I did not make that memorandum without, in all probability, having been requested to do so by Mr. Macfarlane, senior. Mr. Andrew Macfarlane, had several conversations with Mr. Lugsdin, at which I was not present.

Question.—Did you receive any instructions or directions from Mr. Andrew Macfarlane with regard to the making of said statement, if so state what they were?

Answer.—I received instructions from Mr. Macfarlane to make a statement to exhibit to the manager of the Mercantile Agency, but I cannot recollect what Mr. Macfarlane precisely told me to do.

Question.—When you say that you do not recollect precisely what instructions Mr. Macfarlane gave you, have you a general impression of what they were?

Answer.—His desire was evidently to make a favourable impression regarding his standing to the Mercantile Agency.

Question.—In so making that statement did you not intend, and in fact did you not carry out the purpose Andrew Macfarlane had in view?

Answer.—I did not deem any statement given to the Mercantile Agency, who were not creditors of Andrew Macfarlane & Company as being of much consequence. In making that statement I simply carried out the instructions of Mr. Macfarlane.

Question.—Examine all the books now in Court and say if they are all the books of Andrew Macfarlane & Company, which you saw in their own office as stated in your examination yesterday?

Answer.—There were altogether a great many books extending many of them to a number of years back, so that I cannot state whether the pile of books now shewn me comprise all of them.

Question.—Do you see among those books the memorandum Book from which you obtained the details with regard to the entries in the Cash-book No. 4, April 1867, concerning the charges of “Real Estate” and “Profit and Loss” as you stated in your examination yesterday?

Answer.—I do not.

Question.—Take communication of Cash-book, No. 5, Page 297, showing a balance of cash in favor of the Insolvents of the sum of £15,458, 12s. 1d. in February last, and look also at Cash-book No. 4, February 1868, showing a debit of £15,871, 7s. 9d. and explain how you account for these two entries.

Answer.—There were two distinct sets of books kept, and the money apparently short in one of the Cash-books is accounted for by the surplus which appears in the other.

Question.—What is the reason that the Cash-book No. 4 has not been posted for two years, since November 1865, when these large amounts paid for real estate and Profits and Loss appeared to have been charged in that book in April 1867?

Answer.—The old Cash-book in question contained with few exceptions entries regarding accommodation notes, and it was of comparatively little use that it should be posted into the Journal and Ledger.

Question.—How was it then that you could obtain 'a correct balance of the affairs of the Insolvents when these large amounts were not debited?

Answer.—These were Balance sheets made and statements in which allowances were made for all these things.

Question.—Were these large amounts posted in the Ledger?

Answer.—They of course were not, as already stated, the old set of books had not been posted up for some time.

Question.—Take the journal and Cash-book of the old set of books and state when they were last journalized and posted?

Answer.—As appears by the Journal the last entries made in it are dated 30th November 1865.

Question.—Referring to your answers where you state that the Mercantile Agency were not Creditors, were you aware at that time that they were representing Creditors of the Insolvents?

Answer.—I was not aware that at the time the statement alluded to was handed to Mr. Lugsdin, Manager of the Mercantile Agency, that they represented any of the Creditors of the firm of Andrew Macfarlane & Co., although I have since been made aware that they now do represent English Creditors.

Question.—Was not the said statement given to the Mercantile Agency with the view of being referred to by the Creditors of the said Andrew Macfarlane & Co., for their information?

Answer.—I did not overhear the conversation which took place between Mr. Macfarlane and Mr. Lugsdin; but of course presume that the Agency would make such use as they thought fit of such statement.

Question.—Please answer precisely if that said statement was not prepared for the Mercantile Agency, for the purpose of giving information to their subscribers and the Creditors of the said Andrew Macfarlane & Co.?

Answer.—I of course supposed that statements such as the one furnished to the Mercantile Agency, would be referred to in some way or other, in their reports of the firm; subscribers, who might be creditors would get information from that statement.

Question.—Were you not aware at the time the statement was given, that most of the Creditors of Andrew Macfarlane & Co. were subscribers to the Mercantile Agency?

Answer.—As they nearly all reside in Great Britain, I of course am not aware whether they subscribe to the Mercantile Agency, or not.

I have heard that the Mercantile Agency have a Branch House in London, England, and other places; and I am also aware that most merchants are subscribers.

Question.—Take communication of paper marked A now exhibited to you, and say whether that paper contains in substance the figures you gave to the said Mercantile Agency of the affairs of the said Andrew Macfarlane & Co.?

Objected to as tending to prove by oral testimony the contents of a written document, and as not being the best evidence under the circumstances, and as being altogether irregular and illegal.

Objection maintained.

Question.—Are you aware that on the 14th of February last, at a meeting of the Creditors of the said Insolvents, the outstanding debts due the Estate were stated by the said Andrew Macfarlane & Co. to exceed £31,000 0s. 0d.?

Answer.—I know the amount was large; but not having the precise statement I cannot say.

The paper marked B now shewn to me is the statement produced on that occasion.

Question.—Have you classified those outstanding debts and do you know their value?

Answer.—I have not classified them, and to put a value on them would not be a very easy job. I don't consider them as anything very great.

Question.—Can you specify any value?

Answer.—I do not consider a great deal will be realized from them. I consider them a bad lot of debts.

Question.—Do you know anything about the loss of over £20,000 on Goods sold by auction? State what you know about this.

Answer.—Nearly the whole of the goods last imported by the firm were sold at public auction ; the loss on them was certainly very large. I did not make up the amount myself. The amount of the fall importation which was the last was about £20,000 stg.

Question.—Over what period did that loss of goods sold by auction extend ?

Answer.—To the best of my remembrance a period of nine or ten months previous to the assignment.

Question.—By looking over the books or otherwise, can you ascertain the amount of stock that was sold by auction and currency cost price ?

Answer.—As the goods were consigned to various auctioneers, and entered in different books, it would be a matter of considerable time for me to find out. The paper marked C contains a list of the names of the auctioneers the goods were consigned to ; as to the value of the goods, it was generally given to me by Mr. Robert Macfarlane.

Question.—Are the goods so sent to auction in their original packages they were imported in ?

Answer.—Many of them were so sent.

Question.—By the word many do you mean the largest quantity ?

Answer.—I did not superintend the sending out of them, but I am aware that some were sent in the original packages, and others which had been opened up in stock were also sent. I cannot state the proportion ; Mr. Macfarlane, junior, is the proper party to answer this question.

Question.—By looking over the books can you ascertain the first time the goods were sent to auction ? Look to the merchandise account or otherwise.

Answer.—The dates at which each consignment was sent are entered. I believe in every instance in the book where the goods so consigned, are copied. By looking to book No. 13, consignment to Mr. McGregor, I find that in the beginning of January, 1867, Andrew Macfarlane & Co., were sending goods to be sold by auction : whether they were sold at a loss or not I cannot determine positively, but my impression is that they were sold at a loss, as the other goods sold after.

Question.—How is it that in June, 1867, in Cash-book No. 4

£5,073 13s. 2d., accommodation bills were discounted, and the discount on them was £62 9s. 7d., in July, 1867, only £1,174 1s. 0d., was discounted, the discount was £79 2s. 4d ?

Answer.—I do not remember the details, but the amount of interest would, of course, depend partly on the time the notes had to run before maturity, and partly as to the rate paid to get them discounted.

Question.—Did the said Andrew Macfarlane, after purchasing the Fall goods, mention to A. B. Stewart, or some other person, that he owed nothing on the Spring importation ?

Answer.—I am not aware that I was ever present at a conversation of that description.

Question.—Do you know if any part of the estate of the said Andrew Macfarlane & Co., as well as co-partners, as well as individually, has been secreted and not delivered to the assignee ?

Answer.—There was a safe taken out of the office, which I was told was lent to Mr. Johnston Thomson, I do not know of anything else not having been delivered.

Question.—What did that safe contain when removed to Mr. Johnston Thomson's ?

Answer.—I was not present when the safe went away, but have every reason to believe that it was empty, my reason for so believing is that the books which used to be in that safe, I afterwards found in the office.

Question.—Did you see in the office, the memorandum book above alluded to, after the removal of the said safe ?

Answer.—I cannot remember when I last saw the memorandum book.

Question.—What is the real Estate of Mr. Andrew Macfarlane ?

Answer.—A store in St. Paul street, the dwelling house he occupies, some property at Bonaventure, below Quebec. He had mining stock in the Montreal Mining Company, some three thousand odd shares, which were handed over to Kidstone & Sons, Scotland, some years ago. The real Estate is valued at about its full worth.

I have not seen Mr. Macfarlane since my examination, yesterday. And further the deponent sayeth not, and the deposition having been read to him, he declares it contains the truth, persists therein, and hath signed.

(Signed,) GEORGE PARYS.

(Signed,) CHARLES MONDELET, J. S.C.

Re-appearing, this first day of May, of the year eighteen hundred and sixty eight, the witness continues his deposition, as follows :

I did not communicate with the Insolvents, nor anybody else since my examination, yesterday.

Question.—How is it that Mr. Robert Macfarlane had been a partner for two years and upwards, and that there is no entry in the books of the date of his entering the firm, and of the amount he has drawn therefrom ?

Answer.—Although Mr. Robert Macfarlane was a partner, there never was any account opened for him in the Ledger, and everything regarding the books was carried on as if Andrew Macfarlane, personally, was the sole proprietor of everything.

Question.—Did you prepare and give a statement to Mr. Andrew Macfarlane before his leaving for England last summer ?

Answer.—What kind of statement is meant ? If you mean a general statement of the affairs of the firm, I did not.

Question.—I mean any statement of the affairs of Andrew Macfarlane & Co., whether special or general ?

Answer.—I do not remember giving any such statement.

Question.—Are you aware that in fact Andrew Macfarlane took to England a statement of his affairs, either prepared at that time or before ?

Answer.—I do not know what statements he may have taken to England, if any.

Question.—When did you make up the last statement of the affairs of Andrew Macfarlane & Co ?

Answer.—As far as I recollect, when I balanced the books at the end of November, 1866.

Question.—In what position did you then find the affairs of Andrew Macfarlane & Co ?

Answer.—I do not remember, not having the statement before me.

Question.—Look at the books now before you, and by examining the same can you not ascertain the state of the affairs of the said A. Macfarlane & Co. at that time ?

Answer.—I cannot do so in the manner you wish me to state, as there are allowances to be made for bad debts, mortgages to be taken into consideration, values placed on real estate, mining stock shares, which varied in value at different dates, &c. &c.

Question.—Did you enter into the statement the bad debts of Andrew Macfarlane & Co. as good ?

Answer.—I forget what I did do at that time, but have no doubt an allowance was made for bad debts. I also quoted the stock in the Montreal Mining Company at its market value.

Question.—To the best of your recollection and knowledge, were Andrew Macfarlane & Co. solvent at the time you made the statement in November, 1866 ?

Answer.—I considered them so.

Question.—How much did you consider them worth ?

Answer.—I cannot answer from memory, as owing to the position of the firms, debts, and other effects, it would be a question more or less of guess work what they might actually realize.

Question. Can't you give us some idea of about the amount the books show ?

Answer.—I believe from the manner in which debts, &c. &c. were estimated, the statement showed a few thousand pounds to the good.

Question.—What do you mean by a few thousand pounds ?

Answer.—Say perhaps five or six.

Question.—When you say that you cannot state precisely the position of Andrew Macfarlane & Co. in November, 1866, not having the prepared statement before you, on what was the said statement written, and where is it to be found, and where, likewise, are to be found the other statements and balance sheets above referred to ?

Answer.—They were written on sheets of paper, and should be found among the papers of the firm.

Question.—By looking among the papers of the estate, if they are complete, will you be able to find them ?

Answer.—That I cannot say.

Mr. Justice Mondelet.—Witness ordered to proceed to the office of the assignee, A. B. Stewart, forthwith, and also, if necessary, to the office of the Insolvent in this case, then and there to search and ascertain if there, and to produce statements and balance sheets above referred to, and more particularly the one made in November, 1866, and the memorandum book referred to above,

and for such search and production, and his own examination, witness will be taxed and paid.

In consequence of the above order of the Court, the deposition is adjourned till the production of the above mentioned papers, and the witness having taken communication of the said deposition, he declares himself content of the truth thereof, persists therein, and hath signed.

Signed, GEORGE PARYS.

Signed, CHARLES MONDELET, J.

(True Copy.)

Re-appearing this second day of May, one thousand eight hundred and sixty-eight, the witness continues his deposition as follows:

Immediately after I left the Court yesterday afternoon, I proceeded to the office of the official assignee, where, in the presence of his bookkeeper, a German, I examined all the books and papers in the possession of the assignee, but I did not find any of the balance sheets and statements above referred to. I did not find either the memorandum book also above alluded to.

In the above named bookkeeper's company, I also went to the office of the Insolvents, in St. Paul Street, where I did not find any of the balance sheets and statements above referred to; I neither found the memorandum book.

I left the office of the Insolvents at the time they made the assignment.

Question.—Do the books of the firm of Andrew Macfarlane & Co. show at any time any profits?

Answer.—In certain years I believe they do, but as no allowance is made in the profit and loss account in the Ledger for bad debts, it is impossible for me to say whether there were any profits or not.

Question.—How is it that the account of Robert Stewart of St. Jean Chrysostome is closed by bills receivable and not entered in the Bill Book?

Answer.—I cannot precisely state how this happens, but consider it a matter of not the slightest importance, as it is accounted for in the Journal and Ledger.

Question.—What is the purpose of keeping a Bill Book?

Answer.—To enter notes both received and granted.

Question.—Suppose many notes do not pass the Bill Book, would you consider this of no importance?

Answer.—It might, if there were many, very likely lead to inconvenience regarding the dates when they fall due and should be paid.

Question.—Was it not an omission not to enter that Bill of Stewart's in the Bill Book?

Answer.—It was.

Question.—Where did you first become acquainted with the fact that the said Andrew Macfarlane & Co. were Insolvents, that is to say, their assets being insufficient to cover their liabilities?

Answer.—I was kept very busily at work during the season of eighteen hundred and sixty-seven, and as the great bulk of their stock was sold by auction, it was only after the account sales came in from the auctioneer's—some of them are not yet in—and shortly before the firm made an assignment, owing to English creditors pressing for payment, that I had time to make a hurried statement of how the firm's affairs stood. By looking at the statement furnished to the assignee, you can best judge for yourselves how matters stood.

Question.—Previous to that had you made a statement allowing thirty thousand pounds for bad debts?

Answer.—No, I never did.

Question.—Did you make one making an allowance for the bad debts, previous to the time above referred to?

Answer.—Yes, in November, eighteen hundred and sixty-six.

Question.—Why did the said firm send so many goods to auction from the beginning of 1867 to the end of same year?

Answer.—They are the best parties to answer this question themselves, but as they had large numbers of notes to pay, I suppose they considered getting advances on those goods as the readiest way of raising money.

Question.—Were these notes accommodation or business notes?

Answer.—They were nearly all accommodation notes. By this I mean notes granted by parties to the firm which were not so given for any value received.

Question.—What amount of sales would the firm make in twelve months upon an average?

Answer.—A glance at the merchandize account in the Ledger would show that. I have looked at the books, and taking one year with another for the last few years, the average would be say about twenty-three thousand pounds currency.

Question.—What is the amount of the last importation in the Spring and Fall of 1867?

Answer.—~~Seventy~~ nine thousand six hundred and three pounds sterling, and as it costs on average about fifty per cent. on the sterling to lay goods down here at cost price, this would make the amount come to £44,404 0 0 currency.

Question.—Why was it that Andrew Macfarlane & Co. made such large importations in 1867?

Answer.—You had better ask themselves that question.

Question.—Explain what you mean by capital account in the Ledger No. 1, page 1.

Answer.—By referring to the details in the Journal, you will see the explanation in detail. It refers, simply, to such accounts as were transferred from the old to the new Ledger.

Question.—Why was it that the accounts of George Parys, William Spence and Adolphe Raymond, stated in the Journal, numbered fifteen, to have been transferred from Ledger C. to Ledger D. do not appear in that Ledger, neither in any of the new sets of books?

Answer.—As these entries were made in 1861, I do not recollect how this happens, but, at the time they were made, they were, doubtless, made with good reason.

Question.—Do you know anything concerning the Estate of the said firm, or of Andrew Macfarlane, individually, which has been secreted or in any way kept from the Creditors?

Answer.—I do not.

Cross-examined.

The cross-examination of the witness is opposed to by the assignee, as the examination of the witness is for, and in behalf of the Creditors, only.—Objection reserved.

With reference to the said paper B. I have to explain that at the

Twenty

meeting of Creditors, at which said paper B. was submitted, the details of the debts therein entered in a block sum, were given in a separate statement.

Being asked the capacity of the Insolvent, Andrew Macfarlane, to keep a set of books such as were kept by the said firm of Andrew Macfarlane & Co., I answer : He is quite incapable of doing so.

Question.—If you were to submit to him all the said books of account for the purpose of preparing a Balance sheet of the affairs of the firm, do you consider that he has capacity enough to prepare such a Balance sheet ?

Answer.—I am quite certain that he has not.

The said Andrew Macfarlane is not a man of education, and has not any professional knowledge of Book-keeping.

Re-examined under reserve of objection.

If a balance sheet were submitted to the said Andrew Macfarlane, I consider that he has capacity enough to understand it, as he is a shrewd old man, and knows very well what he is doing,

And further, the deponent sayeth not, and the deposition having been read to him he declares that it contains the truth, persists therein, and hath signed.

Signed, GEORGE PARYS.

SWORN on the twenty-ninth day of April, eighteen hundred and sixty-eight, taken and acknowledged before me at in the Insolvency Room the second day of May, of the year above mentioned.

(SIGNED) CHARLES MONDELET, J.

DEPOSITION OF ROBERT MACFARLANE.

On this first day of May, one thousand eight hundred and sixty-eight, personally appeared before the Honorable Charles Mondelet, one of the Judges of the said Superior Court, Robert Macfarlane, of the said city of Montreal, merchant, on behalf of said assignee who being duly sworn on the Holy Evangelists, doth depose and say :

I am one of the Insolvents in this case.

Question.—When did you become a member of the firm of Andrew Macfarlane & Co ; state date, month and year ?

Answer.—Without having the articles of co-partnership before me, to the best of my memory it was the first of January, eighteen hundred and sixty-four (1864).

Question.—Were those articles of co-partnership made under private hand or before a notary ?

Answer.—I believe they were made under private hand.

Question.—Do you swear that those articles were written and made in January 1864 ?

Answer.—I believe they were written shortly after that, to date from then.

Question.—Can you swear they were made in 1864 ?

Answer.—Yes.

Question.—Was the said copartnership ever registered in the books of the Court ?

Answer.—I believe they were, but I am not positive.

I did not put any means in the business. I believe that I was to get the fourth of the clear profits, but I am not positive, not having the documents before me, but there never was a division of profits.

Question.—Did you ever have any profits to divide ?

Answer.—I believe there were profits to divide.

Question.—Will the books show those profits ?

Answer.—I presume so.

Question.—Look at the books and show where those profits are entered ?

Answer.—Never having had experience in keeping books, it would be difficult for me to do so. I know very little of the books.

Question.—Did you ever draw any money from the firm ?

Answer.—Any money that I ever required I got from my father, Mr. Andrew Macfarlane, which was given to me out of his own pocket-money.

Question.—What do you mean by this pocket-money ; where did it come from ?

Answer.—Money which belonged to Mr. Andrew Macfarlane individually, and over which I had no control. I cannot say where he got it from.

Question.—Was it not money drawn from the business ?

Answer.—I never asked him where he got the money.

Question.—Had your father any private estate or income ; if so, what was it ?

Answer.—Yes. He had real estate property in Montreal and out of Montreal.

The real estate in Montreal consisted of the dwelling house in Côte St. Antoine, warehouse in St. Paul street occupied by the firm, and other properties in Montreal, which I could not detail without having the title deeds.

Question.—Had your father those title deeds, and where are they?

Answer.—I cannot say where they have been and where they are.

Question.—Are you aware that your father has delivered the whole of his private estate over to the assignee?

Answer.—I presume he has, but I am not certain.

Question.—Since the failure of the firm, who has collected the rents of the private estate of Andrew Macfarlane?

Answer.—I am not aware that any have been collected.

Question.—Who are the tenants of your father?

Answer.—I do not know.

Question.—Do you swear that your father had a private income within the last two or three years; if so, what was its probable amount?

Answer.—He has had a private income, but I cannot say what the amount was in full.

Question.—Can you give the whereabouts of the amount?

Answer.—I am uncertain, but about seventeen hundred pounds, for the whole period of the two or three years.

Question.—Did the firm of Andrew Macfarlane & Co. pay any rent for their warehouse.

Answer.—They did.

Question.—Was the rent payable quarterly, yearly, and what was the amount of it?

Answer.—It was paid at various times; the rate of the rent was six hundred pounds per annum and was payable quarterly. There was no written lease.

Question.—When you say that the rent was paid at various times, what do you mean?

Answer.—I mean that when Mr. Macfarlane drew the rent, he placed a memorandum in the cash box representing the amount he drew, which memorandum remained there until they were charged in the books.

Question.—Was the money so drawn charged to rent in the books ?

Answer.—It was.

Question.—At the end of the year 1864 was the rent of that year paid ?

Answer.—I could not say without having the memorandums before me.

I cannot say whether the rent of any of the years 1865--66 and 67 was paid without having reference to the memorandum.

Question.—Was any part of that rent paid in 1864, 1865 or 1866 ?

Answer.—Yes. I believe the rent was paid all three years.

Question.—Take communication of cash book No. 5, entry on page 290, as follows : By charges, rent of the store from 1st January 1864 to 1st January 1868, 4 years at £600, £2,400, and interest £280 10s., making £2,680 10s., and explain the same, and how can you reconcile that entry with your previous answers.

Answer.—This rent was not all paid at one time, but charged at one time from the memorandums.

Question.—Do you mean to say that rent paid in 1864 was only entered in the cash book in 1867 ?

Answer.—I do.

Question.—How then do you reconcile last answer with the interest on the rent charged in the book ?

Question.—I cannot account for the correctness of the interest charged in the book.

Question.—Was there any memorandum book kept either by yourself or your father where your private expenses were entered ?

Answer.—There was no book kept by me or my father, with reference to my private expenses.

Question.—How then could you arrive at a correct statement of the affairs of the firm, the division of the profits for instance ?

Answer.—Any moneys received by me had nothing whatever to do with the firm. I had not to account those moneys to any one.

Question.—Do you know anything about the balance sheets and statements of affairs of your firm.

Answer.—Very little, sometimes they were made on an old trial balance book, but in later years on sheets of paper. I cannot say

whether this trial balance book belongs to our estate or some old estate. The balance sheets of our firm were never, as far as I remember, entered in that book, as that book was not in use for over ten years; during the last ten years, very few trial balance sheets I believe were made out, and were entered on sheets of paper. In all this answer I have been alluding to trial balance sheets only and not to general balance sheets as I never saw any general balance sheets.

Question.—What do you mean by trial balance sheets and general balance sheets?

Answer.—I mean by trial balance a statement made out to show that the books are correctly posted, by general balance sheets I mean a statement showing good, bad and doubtful debts, the amount of liabilities, &c., &c.

Question.—Do you mean to say then, that you did not know the exact position of your affairs from year to year.

Answer.—I do mean to say so.

Question.—Then you did not know at any time whether your firm was solvent or not?

Answer.—I knew the firm was solvent from the fact that we never had any paper protested.

Question.—Is this fact the only reason you have for saying that you knew your firm was solvent?

Answer.—Not having any goods over due and not paid, or notes or any other correct claim unsettled, I considered the firm solvent. I have no other reasons for saying so.

Question.—How often did you cross over to England and Scotland as buyer for your firm, and when did you make the last trip?

Answer.—I have gone over to purchase frequently, but do not at present exactly remember how many times. The last trip I made was in December, 1866, I think, and I returned about February, 1867.

Question.—When you were in England or Scotland, were you not asked by any merchant from whom you purchased goods the position of your firm?

Answer.—I don't remember that I was so asked.

Question.—Have you not represented your firm to be worth a certain amount, and what amount?

Answer.—I don't recollect ever stating that our firm was worth any particular amount.

Question.—Have you represented your firm being solvent, and were you asked if it was solvent?

Answer.—I do not recollect being asked if the firm was solvent. I have never had any reason to doubt that the firm was not solvent.

And this deposition is closed for the present and is continued to-morrow at eleven o'clock. This part of the deposition being read to witness, he declares that it contains the truth, the whole truth, and nothing but the truth, and he hath signed.

(Signed,) ROBERT MACFARLANE.

Sworn to and acknowledged this first day }
of May, eighteen hundred and sixty- }
eight in the Insolvency Room before }

(Signed,) CHARLES MONDELET, J. S.C.

Re-appearing this fourth day of May, eighteen hundred and sixty-eight, the witness continues his deposition as follows :

Question.—Do you swear that at the time you entered into co-partnership with your father, Mr. Andrew Macfarlane, in January, 1864, that you did not know what his position financially was, and that since 1864 to 1868, you never knew or never inquired whether the business was progressing profitably or unprofitably.

Answer.—I did not know what his position financially was when I entered the co-partnership. I cannot recollect that I asked him whether the business was progressing profitably or unprofitably, as I had no doubt that it was progressing favourably.

Question.—Did you ever see any balance sheet after the year's business had been closed ; if so, what was the result of that year's business, and what year was that ?

Answer.—I do not recollect seeing a general balance sheet.

Question.—Who kept the cash while Mr. Andrew Macfarlane was in England ?

Answer.—I received the cash. Mr. Parys also frequently received the cash, which he handed over to me, and he made the entries in the books. I kept the cash.

Question.—Had you any private memorandum book for entering the cash, or was it entered simply in the general cash book ?

Answer.—Mr. Parys entered all the cash in the cash book.

Question.—Did you ever see any private books such as private memorandum books, private ledgers, and balance sheets, in the possession of your father ?

Answer.—I have seen a private memorandum book, which is now in the possession of the assignee, and which is sometimes called the private ledger, although it is only a memorandum book. I have seen trial balance sheets in the office, but very seldom.

Question.—When was the last time you saw this private memorandum book and trial balance sheets in the office ?

Answer.—The last time I saw this private memorandum book was in the office of A. B. Stewart the official assignee. I do not remember when I last saw the trial balance sheets ; it is sometime ago.

Question.—What memorandums did this private memorandum book contain ?

Answer.—So far as I remember a list of salaries and various seasons' importations.

Question.—Did it contain any memorandum regarding your father's private estate ?

Answer.—I do not think so.

Question.—Did you ever see or hear of such a book, to wit, where entries are made concerning your father's private estate ?

Answer.—Yes, I have seen a small memorandum book.

Question.—What memorandums did that book contain ?

Answer.—Memorandums of moneys that he had paid out at various times. These moneys were paid out for his private affairs, a list of which was detailed in the book.

Question.—When is the last time you saw that book, and where is it now ?

Answer.—I don't exactly remember when I saw it for the last time, but I believe that it is along with the other books in our late office.

If I am allowed to work among the books and papers of the estate, I might find that private memorandum book and the trial balance sheets.

Question.—What was your department in the business of the Insolvents ?

Answer.—Tending the warehouse and the goods department, that is, buying and selling the goods.

Question.—Who took the stock down in the stock book ?

Answer.—The stock was taken down by myself and other clerks in the warehouse on rough sheets, and handed into the office to be written in the stock book.

The inventory of stock on hand on the 30th November, 1866, was taken by myself and the different clerks of the warehouse. My father and Mr. Parys had nothing to do with the taking down of the stock.

Question.—Was that inventory taken down at sterling prices or selling prices ?

Answer.—According to the books here, it was taken down at currency prices.

Question.—What was the amount of stock on hand in November, 1866 ?

Answer.—According to the ledger it shows £14,800 currency.

Question.—How is it then that this amount differs from that entered in the stock book above referred to ?

Answer.—Not having kept the books, I must refer you to Mr. Parys for an explanation of this question.

Question.—What was the amount of stock on hand on 30th November, 1866, according to the stock book ?

Answer.—It appears to be £18,804 4s. 1d., but not having extended the amounts I cannot speak as to its correctness.

Question.—As being at the head of the goods department, was it not your duty to see that the stock book was carefully and correctly kept ?

Answer.—The amount of stock on hand was correctly taken and handed into the office to be entered. Frequently before the stock was copied from these memorandums, I was on my way to England to purchase fresh goods.

Question.—Do you know anything about the additions of fifty per cent. entered into the stock book, page 72 ?

Answer.—I do not.

Question.—Do you know anything about the alteration of the word selling into sterling at the same folio ?

Answer.—I did not see the alteration made, and I know nothing about it.

The word “currency” at the top of the first page of the stock book is written by me.

Question.—Who in the office had a right to make the alteration referred to besides Mr. Parys, the bookkeeper?

Answer.—Mr. Parys was the only person who kept our books, and was answerable for any errors that might occur.

Question.—Was he the only one that could make entry in the books?

Answer.—He was the only one who had charge of the books?

Question.—Had the other clerks in the warehouse any access to the books?

Answer.—Not without Mr. Parys’ request.

Question.—What would have been the object in adding the fifty per cent. to the stock on hand on the 30th November, 1866?

Answer.—Not knowing I cannot say.

Question.—Are you aware that statements of affairs of your firm were asked from your father after the 30th November, 1866, and was not the said addition of fifty per cent. made with reference to the said statements?

Answer.—I do not think any statement was ever asked for by any of our creditors.

Question.—Was it asked by any body else, and by whom?

Answer.—When I was in England, in the early part of 1867 and latter part of 1866, I believe a rough sketch made by Mr. Parys in a great hurry was shewn to the Mercantile agency only, but not being creditors or in any way interested or representing creditors, I do not consider that it was of the slightest importance that they should be furnished with a statement.

Question.—Why then did you furnish such a statement?

Answer.—I do not know why any statement was furnished them, and had I been present, I should have prevented it, as I do not consider that they had any right to spy into our affairs.

Question.—What was the object in view in furnishing that statement?

Answer.—I do not know, but it is not of the slightest concern, as it does not affect our business position in any way, so far as Mr. Macfarlane’s means were concerned at the time.

Question.—What do you mean by “so far as my father’s means were concerned at the time”?

Answer.—That the Mercantile agency had no claim whatever directly or indirectly against our estate, and so could not affect my father’s means.

Question.—Was the said statement given for the purpose of giving information about the affairs of your firm to your creditors of Canada and England, and to the public at large?

Answer.—I have already stated that I did not know for what reason it was given.

Question.—Are you not aware that the leading Merchants in Great Britain, subscribe to the Mercantile Agency, in order to obtain information regarding the standing of Merchants and Traders in Canada?

Answer. I am aware that a number subscribe to the Agency for information, but the information furnished is of such an unreliable nature, that the slightest dependence is not to be placed upon it, as from personal experience we have made more bad debts through information received from them, as being correct, whilst we have afterwards found it to be incorrect and not reliable.

Question.—Do you mean to say that when a merchant gives a correct statement of his affairs to the Mercantile Agency, the latter would give an incorrect or unreliable statement of the standing of such Merchant?

Answer. Any institution that attempts to levy black mail, and will mark your Credit accordingly, I do not consider that much reliance is to be placed upon their statements, so that I think they are not to be depended upon to give a correct statement, even when they obtain a correct information.

Question. Was the statement furnished about your affairs to the Mercantile Agency a correct or incorrect one?

Answer. I do not know whether the statement is correct or not; not having troubled myself about the matter. I consider it was a piece of impertinence on their part to ask such a statement, as they were not connected with our business.

Question. Did your father tell you that he had raised the stock by fifty per cent. in order to give a statement to the Mercantile Agency?

Answer. He did not, and I don't believe he was aware that such a thing was done.

I am not aware myself that this was done.

Question. On the 30th November, 1866, what was the value of your out-standing debts?

Answer. Not keeping the books, it is quite impossible for me to say.

Question. Did you not know that most of said debts were bad debts?

Answer. I did not, nor do not know that most of those debts were bad.

Question. What was the amount of your yearly sales upon the average?

Answer. I do not know.

Question. Are you not aware that your last importations were not warranted by the sales of previous years?

Answer. Previous to Mr. Macfarlane purchasing the Stock, the prospects of a large trade being done throughout the Province, were such that we had every reason to believe that we could sell the Goods, and we are not the only merchants who have erred, having, unfortunately, imported more than they were able to dispose of.

Question. What did you do with those goods when they arrived in your warehouse?

Answer. We opened them as soon as possible, and sold as much as we could.

Question. Did you not send a great portion of those goods immediately to auction, without even opening the packages?

Answer. Goods were sent to auction from stock in the warehouse, as well as some in packages.

Question. Was not the bulk of your sales, last fall, made by auctioneers?

Answer. Not having examined the books I cannot say.

Question. Take communication of Cash Book, page 291, and what is the amount of goods entered there as sold by auction?

Answer. About thirty thousand pounds.

Question. Does the statement marked C. filed with Mr. Pary's deposition, show the quantity of goods sold by auction, and the names of the auctioneers to whom they were sent?

Answer. I cannot say without checking over the statement.

Question. Take communication of Cash Book No. 4, April 1867, and can you explain the charges: "By real Estate, sundries per list £3758. 2. 7. "By Profit and Loss per list £4616. 13. 0, and "By Profit and Loss per list £403. 2. 6."

Answer. I believe these are moneys paid out at various times, during a long time back, the details of which Mr. Andrew Macfarlane had written in a small memorandum book, which he gave to Mr. Parys to enter. Not being interested in the matter I did not pay any attention to it, but believe it is quite correct, and have no doubt that our book-keeper can explain the matter.

Question.—Do you mean to say that you are not interested in charges made against the Cash of the firm, so large as those three above referred to?

Answer.—So far as my memory serves me, I believe those disbursements were made previous to my being taken into partnership.

Question.—Where is the memorandum you have just alluded to?

Answer.—I believe it is along with our other books and papers connected with our business.

Question.—Have you any private estate which you have not delivered to the Assignee?

Answer.—No.

"On behalf of Mr. Girouard, representing the Creditors and Assignee, it was ordered by the Court that the Insolvent, Robert Macfarlane, do forthwith proceed to make a true and diligent search for a certain private Memorandum Book, and Trial Balance sheets, above alluded to by the said Insolvent, and to deliver them into the hands of the Assignee."

And further the Deponent sayeth not, and the deposition having been read to him, he declares it contains the truth, persists therein and hath signed, and the deposition is adjourned till Thursday next.

(Signed.)

ROBERT MACFARLANE.

(Signed.)

CHARLES MONDELET, J.

Re-appearing this eighth day of May, of the year first above mentioned, the witness continues his deposition as follows: I made the

search I was requested to make, in the presence of A. B. Stewart's Book-keeper, and I did not find the private Memorandum or Trial Balance sheets above referred to. I made this search both in the Assignee's office, and in ours also.

Question.—Do you know where the Memorandum Book and Balance sheets are now?

Answer.—No, I do not.

Question.—Look at the Salary book, No. 20, about the middle of book, at pages marked "Y" "Z" and state what they refer to?

Answer.—It is a memorandum made by Mr. Parys, purporting to be a sketch of Andrew Macfarlane's affairs. There is a date mentioned on page "Z" December 1st, 1866, but whether that refers to the time this sketch was made out, or has reference to the statement, I cannot say.

But I do not consider it is of any importance respecting the business of Andrew Macfarlane & Co., as on the face of it, it states that it was merely a rough sketch, the correctness of which statement I am not aware of.

Question.—Do you mean to say that because it was a rough sketch, that the valuation of your assets could be of several thousand pounds incorrect?

Answer.—I have already answered above that I do not know that this statement is correct.

Question.—Have you any reason to believe that it was not correct, and what is your reason?

Answer.—It was made up so hurriedly, that I believe it was not correct.

Question.—Why was it made up so hurriedly?

Answer.—Not being here at the time it was made out, I refer you to Mr. Parys for the information.

Question.—For what purpose was this statement made?

Answer.—I believe it was made out at the request of Mr. Lugsdin, manager of the Mercantile Agency.

Question.—Do you mean to say it was made for the Mercantile Agency?

Answer.—Yes, I believe it was made to be shewn to the Mercantile Agency only.

Question.—Is it the original of the statement shewn to the Mercantile Agency?

Answer.—Yes, I believe it is.?

Question.—How is it that your stock on hand is valued in that statement at £28206. 6. 1.

Answer.—I do not know.

Question.—Do you mean to say that this entry was incorrect?

Answer.—Comparing it with the Ledger I should say it is.

Question.—Is it incorrect only by a few thousand dollars?

Answer.—The amount of stock on hand by the Ledger is what I consider correct.

Question.—What does this incorrectness amount to?

Answer.—Presuming the stock on hand, mentioned in this rough sketch, to be the stock on hand on the 30th November, 1866, the difference between it and the amount in the Ledger on the 30th November, 1866, is £13,406 6s 1d.

Question.—When your father was in Great Britain last summer, did you write to him?

Answer.—I did occasionally. I think I wrote any letter that was sent to him, with reference to our business.

Question.—Did you take a copy of those letters?

Answer.—So far as I remember, I don't think I did.

Question.—How is it that you did not copy those letters in your Letter Book?

Answer.—It is difficult to say why I did not do it, as I do not remember any particular information being in those letters to enter them in the book.

Question.—Take communication of the private Letter Book now before you, and state if you have seen another private Letter Book containing copies of the letters written subsequently to the 31st May, 1867.

Answer.—Many of the letters written since then were not copied at all, others you will find copied in the other Letter Book now before you, called the General Letter Book.

Question.—Does the General Letter Book contain private letters concerning the business of the firm?

Answer.—There is a letter on page 292, to our Lawyers in Upper Canada, another at folio 282, to Gibson & Co., Auctioneers, of Quebec; another at page 281, to Hooker, Candee & Co., New Haven; another, same page 281, 2nd December, 1867, to Brown

& Wills, Ingersoll ; another at folio 280, to B. M. Britton, Esq., Kingston ; another on the 28th November, 1867, to the last named party on the same folio, 280 ; another on folio 278, to Martin & Bruce, Hamilton ; on folio 277, to Brown & Wills, Ingersoll ; besides these there are others.

u estion.—Do you find in that General Letter Book any English letters after the 31st May, 1867 ?

Answer.—There is one on page 270, to Anderson & Thornburn, but the others do not appear to be copied, so far as I have looked.

Question.—What became of your English correspondence after the 31st May, 1867.

Answer.—Not having written the correspondence, it is impossible for me to say.

Question.—Did you see in the office of your firm where the said English correspondence from 31st May, 1867, was copied ?

Answer.—The only English correspondence I see copied is contained in the General Letter Book.

I swear there is no other Letter Book than the Private Letter Book and the General Letter Book since September, 1865.

Question.—What did you do with the letters you received from England and elsewhere—did you fyle them, and where are they to be found ?

Answer.—I did nothing with them—that was not my department.

I believe Mr. Parys fyled them, as it was his department to see after the Books and Papers. I believe Mr. A. B. Stewart has charge of all the books and papers.

Question.—What is the amount of Exchange you took with you to England the last time you were there ?

nswer.—I cannot recollect, but presume the books will show it.

I had no conversation with any one with regard to this case, since my last examination.

The Insolvent, A. Macfarlane, being called, made default and said Robert Macfarlane declines to cross-examine.

And further the deponent sayeth not, and the deposition having been read to him he declares it contains the truth, persists therein, and hath signed

(Signed,)

ROBERT MACFARLANE.

Sworn on the first day of May, of the year Eighteen Hundred and Sixty-eight, taken and acknowledged before me, in the Insolvency Room, this Eighth day of May, of the year here above mentioned.

(Signed,) ROBERT MACFARLANE.
(SIGNED,) CHARLES MONDELET, J.

Andrew
DEPOSITION OF ~~ROBERT~~ MACFARLANE.

On this thirteenth day of May, one thousand eight hundred and sixty-eight, personally came and appeared before the Honorable Charles Mondelet, one of the Judges of the Superior Court, Andrew Macfarlane, of the City and District of Montreal, Merchant, who being duly sworn upon the Holy Evangelists, doth depose and say :—I am one of the Insolvents, the senior member of the firm of Andrew Macfarlane & Co.

I have been in business in the City of Montreal, as a dry goods merchant, for about thirty-five years ; my brother was with me in the beginning for about three or four years. I then carried on business alone till I took my son into partnership, four years ago last January.

I left at the end of May or the beginning of June of 1867, for England, with the purpose of making the fall importations.

I went to Scotland first, and arrived there about the middle of June. I had gone there first to see my daughter.

Question.—Take communication of a statement of the affairs of your firm entered in the Salary Book, pages “ Y ” and “ Z,” under the heading “ Rough Sketch of Andrew Macfarlane & Co.’s affairs,” and state all you know about the same ?

Answer.—Mr. Lugsdin called upon me and wished to have a private conversation about private matters ; he stated, as they were about getting up a new book, he would like to have an idea how we stood. I answered that I considered it was none of his business, as we owed him nothing.

He then said that a number of houses gave him a statement of the position of their affairs.

After a considerable amount of conversation, I stated that I would instruct Mr. Parys to make a rough sketch.

He said that he would call back, which he did next day.

I then shewed him this sketch, with the understanding that it would not be exhibited to any body whatever.

He said that the Mercantile Agency was a powerful institution, that it could raise firms without any means, and cast down the best established institutions.

I answered that we were perfectly independent of them, and needed no rating from them.

Question.—For what purpose did you give that statement to Mr. Lugsdin?

Answer.—On the grounds that he had urged me so strongly ; I did not give him the statement, he copied it himself from the book in question.

Question.—Did you not give that statement of your affairs for the purpose of giving information about your standing to your creditors and merchants generally?

Answer.—No,

Question.—Were you not aware, then, that the statement would be reported to your creditors and merchants generally?

Answer.—No.

Question.—Were you not then aware that the Mercantile Agency had a Branch House in London, to which was reported the standing of the Canadian firms?

Answer.—Yes.

Question.—Did you give to Mr. Parys, your bookkeeper, any special instructions concerning the making out of the said statement?

Answer.—No, I merely said to him : “ make out a rough statement.”

Question.—By rough statement, did you mean an incorrect one?

Answer.—I did not wish him to go into all particulars ; I just wished him to make a rough sketch.

Question.—Did you give Mr. Parys to understand that he had to prepare a statement without any regard to correctness or incorrectness?

Answer.—I just told him to make out a rough statement, as I considered the Mercantile Agency had no right whatever to obtain a statement from us.

Question.—What did you then mean by a rough statement?

Answer.—Not to be particular.

Question.—In what ?

Answer.—In the statement.

Question.—Was the said statement made with the purpose of shewing how your affairs stood on the 1st of December, 1866 ?

Answer.—I never examined the statement, and paid no attention to it.

Question.—Do you mean to say that you never read it ?

Answer.—I don't know if I have done so before to-day ?

The amount of stock on hand, according to the said statement, appears to be £28,206 6s 1d, on the 1st day of December, 1866, but I do not know what the real amount of stock on hand at that time was ; the Ledger will show.

Question.—Take communication of the Ledger No. 1, page 5, showing the stock on hand to be then £14,800 0s 0d, and the Stock Book, page 72, showing the stock on hand to be also at that period, £18,804 4s 1d, and how do you account for the difference between the amounts in the said Ledger, the Stock Book, and the statement given to the Mercantile Agency ?

Answer.—I do not know, as I do not understand bookkeeping, but I suppose the difference between the entry in the Ledger, and the entry in the Stock Book, may have been composed of an allowance for the depreciation in the stock ; but I consider the entry in the Ledger is correct.

Question.—Is it not customary that the Stock Book should contain the exact amount of the value of the stock on hand, and show the deductions made for all stock, &c., &c., so that the amount in the Stock Book should agree with the Ledger ?

Answer.—I am no bookkeeper, and I don't know what is customary.

Question.—When was that statement given to Mr. Lugsdin of the Mercantile Agency ?

Answer.—I don't remember.

Question.—Was it not during the winter of 1867 ?

Answer.—It may have been.

Question.—Was your stock taken according to “sterling” or “currency” prices ?

Answer.—My son is the person who can best answer that question ; he had charge of all the stock.

Question.—Look at the entries on page 72 of said stock Book, and state if the said entries show the sterling prices ?

Answer.—The line in the book reads at “sterling prices.” I know nothing further.

I see that the word sterling looks like an alteration, but I never saw it before, and know nothing about it.

I know nothing, either, about the additions made in pencil at the bottom of said page 72—“add 50 per cent, £9,402 2s 0d, make costs cy. £28, 206 6s 1d.”

Question.—Do you swear that you never read that statement marked “Y Z” before you gave it to Mr. Lugsdin ?

Answer.—I don’t remember doing so. I never gave the statement to Mr. Lugsdin, but I handed him the book, and he took memoranda from it ?

Question.—Take communication of Cash Book No. 4, for April, 1867, and look at charges “By real Estate sundries per list £3,758 2s 7d.” “By profit and loss £4,616 13s 0.” “By profit and loss Returned J. T., £403 2s 6d,” and explain what is the meaning of those charges ?

Answer.—For years back I have paid sums of money for my properties and for various purposes, which I entered in a small memorandum book.

That book I handed to Mr. Parys, to take the entries from, which he did in April, 1867.

This entry of £4,616 13s 0d, covers a large amount of small payments made through a series of years, which were entered in the said memorandum book.

I know nothing about the last entry of £403 2s 6d, by profit and loss—I cannot explain, but the bookkeeper can ; it must have been for monies paid away, and the books must show it.

Question.—Where is that private memorandum book now ?

Answer.—I don’t know ; most likely it will be in the hands of Mr. Stewart, the Assignée.

Question.—When you said in the answer preceding the last, that the entry “By real Estate” had reference to divers sums of money paid out upon your properties and for various purposes, state where those properties are, and what were those purposes ?

Answer.—The memorandum book will give all the purposes—the book will show—I could not give them from memory.

I cannot say when I last saw that book—I paid no attention to it, as it only interested myself.

I gave it to Mr. Parys, and I did not know that he had entered the amounts in block.

Question.—When you also said that the entry £4,616 13s 0d, covers a large amount of small payments made during a series of years, to what payments were you referring to ?

Answer.—The book will show, I cannot tell from memory.

Question.—Have you not a general impression of the reasons for which those payments were made, and of the sources from which you have obtained the money ?

Answer.—No ; I can't answer without the book.

Question.—How is it that those payments were not entered in the books, accordingly as they were made, and that you waited till April, 1867, to have them charged in the Cash Book ?

Answer.—There was no person interested in those payments, as they were made before my son was a partner with me. The book was simply handed to Mr. Parys to make the entries, and I had no idea that he was going to make them in a block.

Question.—If those monies were paid before your son became a partner, why did you have those monies entered in the books of the firm of Andrew Macfarlane & Co. ?

Answer.—It must have been to square up the Cash Book.

Question.—If those monies had nothing to do with the new firm, could you not square up the Cash Book of the firm, without entering those monies ?

Answer.—I gave the book to Mr. Parys, he made the entries, being the bookkeeper.

Question.—Please answer precisely to my question, whether the Cash Book of the firm could not be squared up without entering those monies ?

Answer.—I really don't know.

Question.—Have you a general impression of the object, purpose and nature of the said Memorandum Book ?

Answer.—I have not, otherwise than that this book was to make entries of the monies I had paid away.

Question.—Have you a general impression of the purposes, objects and causes of said payments, whether they were for private purposes or otherwise ?

Answer.—They were for private purposes on properties and various things.

Question.—Have you a general impression of the causes for which the monies entered in the Cash Book No. 4, by “Real Estate” and by “Profit and Loss,” were paid?

Answer.—Those monies were paid upon my real estate, and for various other things?

Question.—Did you examine the entries made in this Memorandum Book, at the time you handed it over to Mr. Parys?

Answer.—I did not.

Question.—Why did you then hand over that book to have the entries entered in the Cash Book?

Answer.—I handed the Memorandum Book over to Mr. Parys, so that he might be able to balance the books.

Question.—But I understood from you that these monies had no business with the firm, how can you show, then, that it was necessary to enter them in the Cash Book, in order to balance the books?

Answer.—Mr. Parys thought that it was necessary, as they were an old set of books which I had before my son was taken into partnership, and there was no balance struck when my son was so taken into partnership.

Question.—Did you not yourself tell Mr. Parys to make those entries, and were they not made at your own request, and not at Mr. Parys’ suggestions?

Answer.—Mr. Parys, some time before that, stated that I should give him the book to make the entries, which I handed him, I think a day or two afterwards, to make the entries.

I do not know if the books were balanced at the time I gave the Memorandum Book to Mr. Parys; I never interfered with the books.

I think the last balance sheet was made in the fall of 1866.

Question.—Why did you not have the books balanced since that time?

Answer.—I don’t know, but I think the books were balanced every year; the last balance sheet was given to me by Mr. Parys in fall, 1866.

There might have been a balance sheet in 1867, but I don’t remember of any such.

Question.—Are you aware that trial balance sheets were made from time to time ?

Answer.—They were made sometimes, not often.

Question.—Were any general balance sheets made before 1866 ?

Answer.—Yes.

Question.—Do you know where are now the trial and general balance sheets ?

Answer.—They must either be in Mr. Stewart's possession, or down at the warehouse.

Question.—Look at entry, page 290, of Cash Book No. 5, for rent of store from 1st January, 1864, to January, 1868, at £600, makes £2,400, interest £280 10s, total £2,680 10s 0d, and explain the meaning of the same ?

Answer.—When I and my son entered into partnership, it was agreed between us that the store should bear a rent of £600 per annum, on account of it being my private property, and I frequently drew monies on account of the rent, and entered the monies so drawn on a small memorandum which represented cash when balancing the cash, and I gave, I think, to my son, the memorandum to be given to Mr. Parys, to enter into the books.

The rent was mostly all paid by the time that entry was made during the years 1864, 1865, 1866 and 1867.

Question.—How is it that payments of that rent were not entered in the books as they were made ?

Answer.—I kept them on a memorandum, on a sheet of paper, and had them entered afterwards as above mentioned.

Question.—Do you mean to say that you thought of having those monies, or part of them, entered in the Cash Book, only four years after the money had been laid out ?

Answer.—I thought it was better in 1867, to have the memoranda properly entered in the Cash Book.

Question.—Why did you not think of this before 1867 ?

Answer.—I can't tell you the reason I did not think of it, I had the memoranda always in my cash box, and as I kept the cash, the memorandum represented the cash.

Question.—So for years your Cash Book was not debited with several thousand pounds rent, charges to Real Estate and by Profit and Loss ?

Answer.—It seems not.

Question.—How could you, then, arrive at a balance of your affairs during those years ?

Answer.—I am not competent to make or understand a balance sheet myself, I therefore cannot tell.

Question.—Have you not a sufficient knowledge of commercial business to know that you cannot make a correct balance sheet unless the cash is balanced ?

Answer.—Yes.

Question.—You say that the rent was paid in 1864 and the following years, how do you account for the charge of interest, £286 10s, on the rent during the four years ?

Answer.—That entry may be erroneous ; I cannot explain it.

Question.—When you drew rent at various times, as you say, how were you paid—was it by check or otherwise ?

Answer.—I don't think I was ever paid by check, but took the money out of the cash box ; and further the deponent sayeth not, and the deposition is adjourned.

(Signed,)

ANDREW MACFARLANE.

(Signed,)

CHARLES MONDELET, J.

Re-appearing this 14th day of May, 1868, the witness continues his deposition as follows :—

Question.—Have you not a general recollection of the nature of the transactions for which the monies were laid out, as stated in your examination yesterday, with regard to the three entries in the Cash Book, by Real Estate and by Profit and Loss ?

Answer.—I have no recollection whatever of the entries regarding the Real Estate and the one of £4,616 13s 0d, but as regards the entry for £403 2s 6d, when the question was put to me yesterday, I quite forgot all about it ; I now remember part of it was borrowed money, and for coal that I got, and for whiskey obtained from Dow & Co., for one of our customers, and the interest on these amounts make up the entry. *

* (At this part of the evidence of Mr. Andrew Macfarlane Mr. Girouard made the following motion) :—

Motion on behalf of the said Assignee, that, whereas the witness,

Question.—When were that coal and whiskey bought from Dow & Co.

Answer.—It is some years ago, I cannot exactly remember, but I think I can get a statement about it. It was at the time that Johnson Thompson and the late John McLean were in the firm.

Question.—Is it more than ten years ago?

Answer.—Not so much as that, I think, but I can get the exact date.

The coal I got for myself, both for the house and the store, I got the whiskey for Horatio Delesdernier.

Question.—Why, then, did you charge the whiskey to Profit and Loss?

Answer.—I do not know.

Question.—Why did you likewise charge that coal to Profit and Loss?

Answer.—I do not know Mr. Parys' reason for making such an entry.

the said Andrew Macfarlane, now under examination, has answered, that he could not state from memory for what purposes the various sums of money mentioned in the cash book No. 4, April 1867, were laid out; whereas the said Insolvent so under examination, being asked if he had a general impression of the object, purpose and nature of the said memorandum book, the said witness answered I have not, otherwise than that the said book was to make entries of the monies he had paid away, and that he did not recollect, in a general way, the causes for which the monies entered in the cash book No. 4, were so laid out, and whereas the said witness has stated that he has no general recollection of the nature of the transactions for which the said monies were paid, and that he cannot say on which of his real estate the said monies were laid out, without referring to the memorandum book; and whereas the said witness knows the nature, object and purpose of the said book, and of the said entries, and of the transactions they are referring to, and that the said answers are a mere denial of all recollection without any reason or explanation, the said witness be ordered to answer satisfactorily to the said questions, and that in default of his so doing, he be declared in contempt of Court, and that he be imprisoned in the common gaol of this district, for such time as may be adjudged by the Court.

(Signed)

D. GIROUARD,
Attorney for Assignee.

Montreal, May 14th, 1868.

I borrowed the money from Mr. Johnson Thompson, some years ago ; I cannot at this moment state the precise time, but I can ascertain it exactly. It was by a check, I think, on the Molson's Bank ; but I can ascertain precisely on what bank it was.

Question.—Why did you not then credit Mr. Johnson Thompson for that cash, when you received it from him, and what was the amount borrowed ?

Answer.—I think the amount borrowed was about £230, and the reason why it was not entered in the books was, that I did not wish my bookkeeper to know that I had borrowed the money.

Question.—Who told your bookkeeper to charge that amount to Profit and Loss ?

Answer.—I did not tell him what sort of an entry to make ; I gave him a statement, and he made the entry in his own way.

That statement disclosed the fact that the money had been borrowed from Johnson Thompson, and so much for coal and so much for whiskey.

That statement was given to Mr. Parys about the time he made the entry in the Cash Book.

That statement was a written one, made up by Mr. Thompson himself.

Parties heard, it is ordered and adjudged that inasmuch that the Court knows not, and cannot from the evidence and the state of this case, know and ascertain whether the said Insolvent had the knowledge of the facts sought to be obtained, and that he is concealing that knowledge, and intentionally keeping the same from being ascertained and elicited, and further, inasmuch as the said Insolvent hath given an answer to the questions, the truth or falsehood whereof the Court hath so far no means to declare, the motion now submitted to the Court be hence, and it is hereby, dismissed.

(Signed) CHARLES MONDELET, J.
Montreal, May 14th, 1868.

The petitioner respectfully excepts to this judgment.

(Signed) D. GIROUARD,
Attorney for Petitioner.
Montreal, May 14th, 1868.

(A true copy.)
HUBERT, PAPINEAU & HONEY, P.C.S.

Question.—Did you keep yourself a memorandum in your private Memorandum Book, of the monies so due Mr. Johnson Thompson ?

Answer.—No, I did not ; I kept no memorandum whatever.

Question.—Where is situated the real estate upon which have been laid out the monies above mentioned ?

Answer.—That private Memorandum Book would show it.

Question.—Have you not some kind of a recollection of the place where the said real estate is situated ?

Answer.—I have a knowledge of where the real estate I now have is situated, but I have sold a great deal of real estate at different times, and I cannot therefore state where is situated the real estate those monies were spent on, without the aid of the book.

Question.—Were those monies spent on the real estate you now have ?

Answer.—If you give me that book I would be able to answer,—without it I cannot.

There is no doubt that some of these monies have been spent upon the real estate I now have, but I cannot give the amounts.

Question.—Can you say from memory where is situated the real estate you have sold, or part of the same ?

Answer.—There is a soap factory with a number of dwellings near DeBleury street ; a number of houses in Griffintown ; a large tavern and shop near Longueuil ; a number of properties in the country, of which I cannot give the number, in the Lower and Upper Provinces ; one of these is at Rodden, some in Glengary ; one opposite Buffalo, and a number of others that I really cannot remember.

Question.—Where is situate the real estate you now have ?

Answer.—A store in St. Paul street, where we carried on our business ; my dwellinghouse, some property near the Mile-end, some property up at Hawkesbury, some property down at New Carlisle, in the district of Gaspé. I gave a full statement of all my properties to Mr. Stewart, some time ago.

Question.—Did you not give that statement since the beginning of this investigation ?

Answer.—Yes, I did not think there was any particular hurry for it. When Mr. Stewart asked me for it I at once gave it to him.

Question.—At the time of the assignment, upon Mr. Stewart's enquiry as to where your real estate was situated, did you not answer that you only had your store on St. Paul street, and your dwelling house?

Answer.—I did not.

Question.—Have you any bank stock, or any other stock?

Answer.—I have stock, that is Mining Stock, of the Montreal Mining Company; Telegraph Stock, in the Company which was started some years ago, but which is not now in existence; and some stock in the old High School, which is worthless.

Those are the only stocks which I have.

Question.—Did you not sell that Montreal Mining stock to Messrs Kidstones & Sons, of Glasgow?

Answer.—No, but they hold it as collateral security.

The circumstances under which the Kidstones got this Mining stock were as follows: Some three or four years ago I gave them the scrip as collateral security, in addition to the mortgage which they held; the said scrip being endorsed by me in blank.

Subsequently I got back the scrip, in order to draw a dividend which went into my own business, and afterwards, I think, in the fall of the year I got the dividend, I got back the scrip from them.

In my opinion the Kidstones could not have that stock transferred in their own name on the books of the Company, without a further paper from me, which I never gave them. I think also that the Kidstones fully understood this because they wrote out to me for a proper power to have the stock transferred, and I wrote back offering them the stock at twenty shillings sterling, per share, which offer they never accepted. Since I made the assignment, Mr. Thomas Workman, the agent here of the Kidstones, asked me to assign the scrip to the Kidstones, on the books of the Company, which I declined doing.

Question.—Explain the circumstances under which you gave a mortgage to the Messrs Kidstones & Sons.

Answer.—They were to advance me £16,000 0s 0d sterling, for seven years, at five per cent interest. When the mortgage was given, they had not advanced, I think, over nine thousand pounds sterling; afterwards I received further advances, which can be ascertained by the books.

The way in which the advances were made, was by the Kidstones cashing the various purchases made by me in Europe. These advances were made from time to time.

Question.—Where is your movable estate, beside the Mining stock, and the stock in trade ?

Answer.—I have the office furniture and warehouse furniture, which are in the store, and there is an office safe which I lent to Mr. Johnston Thompson, of which the Assignee has a memorandum.

Question.—Have you not some household furniture ?

Answer.—Mr. Stewart has the inventory of it, and I am still using it, but this furniture belongs to my wife, as settled upon her in our marriage contract, a copy of which has been given to Mr. A. B. Stewart. A large part of the furniture mentioned in the marriage contract still exists, but some of it has been renewed, of course we have bought articles since our marriage, but I cannot specify them in detail.

Part of the present furniture in the house has even been bought by my wife, out of her own money, and the rest has been bought with my money.

When I made the assignment I had no cash, as we were paying accounts ; I think I had in all about ten dollars.

My present means of living are from a friend, Mr. Johnston Thompson, my father-in-law, the fact is, we are making preparations to go and live with him.

Question.—Did you mortgage any of your real estate in favor of Johnston Thompson ?

Answer.—I have, but merely for the payment of accommodation paper, some of which has been paid, and some is still due.

Speaking from memory I should say about \$6,000 ; the books, however, will show what notes he has outstanding.

Question.—What was the real position of your affairs in January, 1867 ?

Answer.—I do not know it ; the books will show it.

Question.—When you were in England the last time, were you asked by any one of your creditors, or any one else, regarding the position of your affairs ?

Answer.—Yes.

Question.—What did you tell them ?

Answer.—I told them that I owed no individual any account that was past due.

The reason I made this statement was that they had learned from the Mercantile Agency, or other source, that I had mortgaged my property, and on being interrogated on the subject, I explained that I had mortgaged my property in favor of the Kidstones, and showed them a copy of the mortgage, but I also explained that I had paid a considerable portion of that mortgage, and it had a number of years to run before payment could be exacted, and that I owed nobody any account that was over due.

Being asked if I did not state that I was worth so much, I answer that I have no recollection of having ever said so. I never exhibited any statement of my affairs, and I could not as I had none.

The persons to whom I made the explanations above-mentioned were, I think, Ryland & Son, of Manchester; Kershaw, Sidebottom & Berry, from Manchester; also Leaf, Sons & Co., London.

I never mentioned what I was worth to any person in Europe.

Question.—Were you aware when you went to England for the last time to make your purchases, of the true position of your affairs?

Answer.—I was under the impression that I was worth a considerable amount of money, after my debts being paid.

Question.—What gave you that impression?

Answer.—Because I paid my debts as they became due.

The books will show the position in which I stood.

Question.—When did you see a statement of your affairs for the last time?

Answer.—I think in 1866, when Mr. Parys balanced the books.

Question.—Where is that statement now?

Answer.—I do not know, I presume it is fyled away with the papers in the warehouse, or in Mr. Stewart's office; Mr. Parys had charge of all such papers.

Question.—What did that statement show as to your true position?

Answer.—I don't remember, but showed a considerable amount after the debts paid—several thousand pounds.

Question.—Have you not some idea of that amount?

Answer.—Say from ten to fifteen thousand pounds.

Question.—Was an allowance made for bad debts in that statement?

Answer.—Yes.

The Mining stock was also taken in that statement at the market rate.

Question.—In the statement marked “Y. Z.,” furnished to the Mercantile Agency, the cash on hand on December 1st, 1866, in the banks and in the office, is put down at £2,387 17s 8d, while the balance of the same date, in the Cash Books No. 4 and 5 put together, make £3,863 7s 5d, how do you account for the difference of £1,415 9s 9d, between those two amounts?

Answer.—I must refer you to Mr. Parys, for I really don’t understand books.

Question.—If the deficiency was only of £1,415 9s 9d, at that date, how can you reconcile this amount with the statement you made yesterday that you had yet to charge, and as to be regarded as cash on hand, a sum of about £10,000 0s 0d, being the aggregate of the sums charged in April, 1867, for Real Estate and Profit and Loss, besides a portion of the two thousand four hundred pounds charged November, 1867, for rent, the latter being at least £1,600 0s 0d?

Answer.—I cannot answer this question at all, I am no book-keeper; Mr. Parys, who made the entries, ought to be able to give the explanation.

Question.—Did you not furnish Mr. Parys with the necessary data to make those entries?

Answer.—I did, as I have already explained.

Question.—How is it then that you cannot give some explanation upon the matters involved in the preceding question?

Answer.—Because I don’t understand the books, not having sufficient education.

Question.—If your deficiency on the 1st of December, 1866, was only of £1,415 9s 9d, as shown by your books, what have you done with the difference between that and the £10,000 0s 0d above referred to, being the total of the three entries, which you stated in your examination yesterday, were required to be made to balance your books?

Answer.—I do not know what the balance was in the books, and I do not understand how the thing could be so; I do not understand the matter, and cannot explain it.

Question.—You stated yesterday that those large entries must have been made to square up the Cash Book, how is it then that your books show that on the first of December, 1866, only the sum of £1,415 9s 9d, was required to square up or balance the cash?

Answer.—Mr. Parys asked me for that book to make the entries from it, but I was not aware whether it was to square up the books, but I supposed it was ; I was under the impression that he had entered the items in detail, and I never knew to the contrary until Mr. Lindsay pointed out the entries to me in Mr. Stewart's office.

I kept the cash, but not the cash book.

As I kept the cash myself, I did not balance it more than once in nine months.

And further the deponent sayeth not, and hath signed.

(Signed) ANDREW MACFARLANE.

(Signed) CHARLES MONDELET, J.

Re-appearing this fifteenth day of May, 1868, the witness continues his deposition as follows :—

I have sometimes been longer than nine months without balancing my cash.

In fact I do not recollect when I last balanced the cash.

I cannot tell therefore whether or not the balance in the Cash Book agreed with the cash on hand.

Question.—What is the meaning of the balances brought down every month in the Cash Book, by your bookkeeper?

Answer.—I don't understand books ; he could give you the reason.

Question.—Look at both Cash Books in 1st December, 1866 and you will find a balance in Cash Book No. 5, of £1,368 15s 1d, and in Cash Book No. 4, £2,434 12s 4d, making a total of £3,803 7s 5d, of cash on hand ; do you mean to say that this amount was not the balance on hand that day ?

Answer.—I cannot say, as I am not a bookkeeper.

Question.—What is the object of keeping a Cash Book ?

Answer.—I should say, to see how the affairs go on ; I never kept a Cash Book myself.

With reference to the said two Cash Books, I should say that they never could have agreed with my cash, because, whilst I was in

business I have borrowed thousands of pounds, and have lent thousands of pounds, of which no entry appears in those books.

I never entered these borrowings and lendings in any book, but kept the *bons*.

Question.—Do you mean to say no regular and true Cash Book was kept of all your cash transactions?

Answer.—The borrowings or lendings did not appear in any book.

I now see before me in Court, the scrip of the Montreal Mining Company, referred to above, exhibited by Mr. Adam Handyside, the secretary of the Company.

On the back of the scrip I recognize my signature, but when I signed, the Power of Attorney which appears over my signature, was in blank.

This Power of Attorney I now see, is filled up, by whom I would not like to swear, but I think it is in the handwriting of Mr. Thomas Workman.

Question.—What was your reason for keeping two distinct sets of books?

Answer.—The Ledger was filled up and the new one was opened, and Mr. Parys told me that as there were a number of our customers who were not very good, it would be a pity to continue their accounts in the new Ledger, and in this way he carried on two sets of books at the same time.

Question.—For what reason then did you continue the old cash book and bill book which were not filled?

Answer.—I cannot give you Mr. Parys' reasons for so doing, he being my bookkeeper.

Question.—Are you aware of the reasons why the old cash book contains all the cash, raised by accomodation paper up to the time of your failure, and likewise the large entries above referred to by real estate and by profit and loss?

Answer.—I cannot give you the reasons, as Mr. Parys kept the books and made the entries as he thought fit in the old or new set of books, having full authority to make whatever entries he liked.

Question.—Are you aware that the old set of books has not been posted or journalized since two years.

Answer.—No, sir, I was not aware of it.

Question.—Look at Ledger No. 18, pages 254, 270, 388, 484, and 568, and explain the meaning of the entries therein made. “By private Ledger.”

Answer.—I cannot explain its meaning, inasmuch as we never had a private Ledger at the time those entries were made. I never kept a private Ledger in my life.

Question.—Look at page 487 of Ledger No. 18, referring to entries made in the journal at pages 439, 417, 436, and state where that journal is?

Answer.—I cannot tell, but it just occurs to me that it may have been one of a parcel of old books which were put with a quantity of toys into the attic of the old store when I was making the alterations, by which I originally intended to convert that store into a new one, and keep the old roof.

The most of those toys were stolen, and a great many of the books were also taken, particularly those which had much blank paper in them.

When these things were stolen it must have been about four years ago; I can give the names of many who can testify to these facts.

Question.—What were their names?

Answer.—Daniel McNevin, one of the firm of Payette & Perreault, my own young men and McNevin’s headman.

Question.—Where is your private letter book since 31st May, 1867?

Answer.—I did not keep one after that date.

I have written scarcely any private letters since the date above mentioned, and any I did write and which were copied, must have been copied in the general letter book.

Question.—Are you aware of the amount of goods purchased in England in 1867?

Answer.—No; I cannot say the amount, the books will show it.

Question.—Was it not larger than any one made during any former year?

Answer.—Yes.

Being asked the reason of this, I answer, before leaving for England, crops were looking well here, and there were prospects of an excellent business, and stocks in the country were small, and I thought that we would do a much larger business than we had ever done, but things turned out differently.

Question.—What did you do with that large importation of goods ?

Answer.—We opened them out as fast as we could, and sold all we could by private sale, but when things turned out as they did, and prices went down in England, we were obliged to sell off a considerable portion of these goods at auction.

We commenced sending to auction, apparently in the month of March 1867, and we continued to do so from time to time up to near the end of the year 1867.

Question.—Why did you send the goods to auction ?

Answer.—To get advances upon them, as we had payments to make.

Question.—Do you mean to say that you were then pressed by your creditors ?

Answer.—We sent the goods to auction in order to meet bills, accommodation paper that was falling due, and no creditor was pressing us because we paid our liabilities as they became due.

Question.—Did you ask advice, or did any body give you advice regarding the sending of these goods to auction, whether you would not be a loser by so doing ?

Answer.—I sent the goods to auction without the advice of any individual, but I met Mr. Benning one day at the corner of the Post office, and asked him how his sale went off (which sale had just taken place) and he answered “splendidly, that it was the best sale he had had for a long time, that it had realized 60 to 75 per cent on the sterling.”

I told him that if he could get 55 to 60 per cent advance on the sterling on the goods, I would send him from £12,000 to £15,000 worth of goods ; I then asked him what advance he could make me, and he answered me “currency for sterling” until the sales were completed, and then he would pay us the difference.

Question.—Did you never go to Mr. Benning’s office and satisfy yourself as to the price the goods were bringing, before you got the account sales ?

Answer.—Yes ; I went to Benning’s office several times, endeavouring to get the account sales, and he stated at last that it was impossible for him to send an account sales for ten days after the sales. I saw the book, but not having the invoice with me, I could not verify the prices, but on one occasion I noticed some of the

goods had been sold under the sterling, and I consequently refused to deliver them, but I afterwards delivered them on his throwing off his commission.

Some of last year's importations were at a credit of four months, some at five months, and others at six months.

I classified our outstanding debts each time they balanced the books, allowing so much for the bad debts.

Since the assignment I assisted, in a very rough way, one of the assignee's clerks in classifying the debts. The clerk had a statement containing the names of debtors, the amounts due, leaving blanks for the classification, and I, in a rough way, gave him my idea of the classification and estimation of these debts.

At the same time, I offered at any time to go more carefully over the whole statement, giving all particulars as to judgments and mortgages.

Question.—When the last time in England, did any merchant refuse to give you goods, and were some of them stopped in England and Canada, before reaching your store?

Answer.—Yes.

Question.—For what reason did they refuse to deliver them?

Answer.—On the report of the Mercantile Agency, although at the time we did not owe a farthing to any one for a debt due.

I voluntarily gave up goods to Mr. Morrice on his asking me to do so, and I refused to receive goods from Mr. Court and the Mercantile Agency, who represented firms from which I made purchases.

The reason I refused was that they wished to change the conditions of payment and I would not consent.

They wanted, in fact, shorter credit, and in some instances an endorser.

Question.—When did you first become acquainted with the fact that your firm was unable to meet its liabilities?

Answer.—Shortly before it stopped.

Question.—What made you aware of that fact?

Answer.—After receiving the account sales from Benning & Barsalou, and noticing the enormous loss we had suffered, we came to the conclusion that we would not be able to meet our engagements.

Question.—If you had not sold your goods by auction would you not have failed any way?

Answer.—I think that I lost by my auction sales as much as would pay all my debts.

Question.—By what you know now, suppose you had kept your goods in store and had not sent them to auction, are you in a position to say you could have paid your liabilities as they fell due?

Answer.—If the Banks had continued discounting I could have done so, but they cut me short, and did so on account of the report of the Mercantile Agency.

Question.—Have you given up to the Assignee all that belongs to you, either as member of the firm or individually?

Answer.—I have given up every thing.

The list now shewn to me is a memorandum of all my real estate which I owned at the time of the assignment, or own now.

That memorandum is in the hand-writing of my son, and was given in to the Assignee.

It is marked with the letter H. I have already looked with one of the Assignee's clerks for the memorandum book mentioned in the former part of my deposition, but failed to find it, and I know that both Mr. Parys and my son have searched for these balance sheets.

I believe I could not find them. And further the Deponent sayeth not, and the Deposition having been read to him, he declares it contains the truth, persists therein, and hath signed.

(Signed,) ANDREW MACFARLANE.

Sworn on the 13th day of May, one
thousand eight hundred and sixty
eight, taken and acknowledged
before me in Insolvency room, on
the fifteenth day of the same month
and year.

(Signed) CHARLES MONDELET.

DEPOSITION OF ANDREW BUCHANAN STEWART.

On this eighth day of May, one thousand eight hundred and sixty eight, personally appeared before the Hon. Mr. Justice Charles Mondelet, Andrew Buchanan Stewart, of the City and District of Montreal, who being duly sworn on the Holy Evangelists, doth depose and say on the part of the Assignee :

I am the Official Assignee in this cause.

Question.—On the first day of May instant, or at any time before or after, were you in the possession, as such Official Assignee, of all the books and papers which were delivered to you by the Insolvents at the time they made the assignment in this cause ?

Answer.—I was and am still in possession of all the books that were delivered to me by the Insolvents.

Mr. George Parys and Mr. Robert Macfarlane, witnesses examined in this cause, under special order of the Court, had full opportunity of searching for and finding a certain private Memorandum book and the balance sheets of the Insolvents. They made the search, but the book and papers looked for, could not be found.

I never saw this Memorandum Book or Balance Sheets.

Mr. Andrew Macfarlane told me yesterday that he never kept any other books than those I have now in my possession.

Question.—What estate did the Insolvents deliver up at the time of their assignment ?

Answer.—If I am to understand the nature of the assets, there were the accounts due the estate as contained in the books of account ; their stock in trade, warehouse and office furniture, which constituted the moveables, and of course the immoveables were assigned in virtue of the deed of Assignment.

The real estate as mentioned by him at the time of assignment, consisted of his dwelling and warehouse, but since then I have received a statement of real estate in other parts of the Dominion. I do not recollect whether it was immediately before the opening of this investigation or after its opening.

Mr. Andrew Macfarlane brought me yesterday some title deeds, relating to his real estate. The Insolvents did not give me any cash at the time of the Assignment. I did not go to the banks, where they were keeping their accounts, as Mr. Macfarlane told me there was no money there.

A part of the stock I found was old stock, and composed of small wares, but the bulk of it was composed of staple goods, which appeared to me by the inventory to be high priced.

He mentioned also at the time of the Assignment some mining stock in the Montreal Mining Company, which was held by the Messrs. Kidston & Co., as collateral security for his debts, but

they were to make no sales without his consent. He said that it was not a transfer, and that he had never given the required consent to them.

(Signed)

A. B. STEWART.

Reappearing this ninth day of the year above mentioned, the deposition is continued as follows: And further the said deponent sayeth not, and the deposition having been read to him, he declares that it contains the truth, persists therein and hath signed.

(Signed)

A. B. STEWART.

Sworn before me the eight day
of May, 1868.—Taken and
acknowledged before me in
Insolvency room on the ninth
of May of the same year. }

(Signed)

CHARLES MONDELET, J.

DEPOSITION OF JOHN LAIDLAW.

On this sixteenth day of May, one thousand eight hundred and sixty-eight, personally came and appeared before the Honorable Charles Mondelet, one of the judges of the Superior Court, John Laidlaw, of the City and District of Montreal, Clerk, on the part of the Assignee, who being duly sworn, doth depose and say:

I am one of the clerks of Messrs. Benning & Barsalou, auctioneers, of the said city of Montreal.

I am aware that during the fall of one thousand eight hundred and sixty-seven, Messrs. Benning & Barsalou sold a large quantity of goods for the Insolvents, and that immediately after the sales, Mr. Andrew Macfarlane used to come to the store and examine our book, in which we put down the prices obtained by the sales, for the purpose of seeing the prices obtained by the sale of his goods.

On the first November, one thousand eight hundred and sixty seven, the Messrs. Benning and Barsalou had advanced cash and their promissory notes to the Insolvents, for the amount of thirty-eight thousand and nine hundred dollars. Those advances were made on and between the first of October and the first of November last.

On the sixteenth and seventeenth of October, one thousand eight hundred and sixty-seven, Messrs. Benning & Barsalou sold goods on the account of the said Insolvents, to the amount of twenty-four thousand and five hundred and fifty-nine dollars; and sixty cents, and on the first of November one thousand eight hundred and sixty-seven, the said Andrew Macfarlane was furnished with the detailed account sales.

He took it to his office in order to check it. After the first of November, at different times, the said Insolvents got more advances from Benning & Barsalou, amounting to twenty-six thousand eight hundred and forty-four dollars.

The goods were sent to us for immediate sale.

I never heard any complaints from Mr. Macfarlane regarding the prices brought by the sale of his goods, but he was very anxious that Benning & Barsalou should dispose of all the goods, in order to send them further consignments.

I am the party in charge of the department, and any instructions about selling or complaints made about the prices, would have to come through me. And further the Deponent sayeth not, and the Deposition having been read to him, he declares it contains the truth, persists therein and hath signed.

(Signed) JOHN LAIDLAW.

Sworn, taken and acknowledged
before me in Insolvency
room, the day, month and
year here above written.

(Signed) CHARLES MONDELET, J.

DEPOSITION OF HENRY THOMAS.

On this sixteenth day of May, one thousand eight hundred and sixty-eight, personally came and appeared before the Hon. Charles Mondelet, one of the Judges of the Superior Court, Henry Thomas, of the City and District of Montreal, Merchant, on the part of the Assignee, who being duly sworn doth depose and say:

I have been a wholesale dry goods merchant upwards of twenty years. I am a member of the firm of Thomas, Thibadeau & Com-

pany. I had been a bookkeeper before that for about twelve years in the firm of Masson, Robertson & Company.

Question.—Look at the Cash book No. 5 of the said Insolvents, and state if in your opinion that Cash book has been the daily Cash book of the Insolvents?

Answer.—By looking at the very first page, I opened, page 4, I should say that this book is certainly not the daily Cash book of the Insolvents. For instance, I find on page 4, an entry. “By interest discounted Molsons “Bank,” made on the 26th of February, 1861, and entered after an entry of the 28th of the same month “Duty per Nova Scotia.” Likewise on page 3, several other entries, similar entries are seen.

It is quite impossible that this book should be the daily Cash book. It must have been copied from the ordinary daily Cash book, kept amongst merchants, and known as daily blotter.

Question.—When a balance is brought down in a Cash book “To balance” or “By balance,” what do you consider as the meaning of those words?

Answer.—“To balance” is the amount of money or valuable securities representing money which you have in possession at the time. “By balance,” is when the cash is short.

Question.—Look at the other books now before you, being Ledger No 1, Journal No 2, and Bill book No 11, and state if you consider these books genuine daily-books.

Answer.—I do not. Referring to the Ledger, folio 52, under the head “Walter Macfarlane,” showing the transactions from the first of February, 1863, to the twenty-first of August, 1866, I am of opinion from the regularity of the writing and the ink being apparently of the same colour, that any book professing to be an ordinary book used in the ordinary transactions of the firm, could not present such uniformity. I should say the Journal and the Bill book do not present quite the same uniformity of character as regards the writing, and yet I should pronounce them copies or compilations from originals as were used as a daily record of their business.

It is not customary among wholesale dry-goods merchants to keep two distinct sets of books.

Some merchants do keep a private Ledger and a private Journal, showing partnership accounts and the Profit and Loss account; our firm keeps those private accounts.

Question.—Look at Ledger No 18, the following pages, 254, 270, 388, 484, and 568, and what would you understand by the entries therein made “By private Ledger”?

Answer.—I don’t understand anything about it. It appears a funny and summary way of closing accounts.

Question.—By my previous question I was not meaning to refer to the nature of the entries, but if by those entries you would understand that a private Ledger was kept by the said Insolvents.

Answer.—Yes; I should suppose so.

Question.—Look at page 487 of Ledger No. 18 to “Profit and Loss accounts,” and would you not understand by that account that a private journal was also kept by the Insolvents.

Answer.—Evidently some other Journal which I do not see must have been kept, as the folios entered in the Ledger do not accord with the Journal now shown to me.

Question.—Look at Cash-Book No. 4, say from entries October 1862 to the end, and can you state if that part of the said Cash book was genuine?

Answer.—It is evidently compiled from another book, as the dates run irregularly, as I have already shewn in the other books.

It is impossible that that Cash book can be an original daily Cash book

Question.—Look at the said Cash book No. 4, entries “By real-Estate and by profit and loss,” and would you not consider those entries irregular and extraordinary?

Answer.—I don’t understand them: They appear irregular, and entries of such a magnitude should have been fully explained, particularly as they appear to have been made for the purpose of balancing the cash and the withdrawing it from the business.

Question.—Is it not customary among merchants to make and keep balance sheets and statements of affairs, showing annually their position.

Answer.—Yes.

It is customary to have books, to keep a book for such balance sheets and statements.

The cash is generally balanced every month.

I consider a man who balances his cash but once in nine or twelve months, guilty of great neglect.

The Insolvents were wholesale dry-goods merchants and importers.

I am not a creditor of the Insolvents.

And further the Deponent sayeth not, and the deposition having been read to him, he declares it contains the truth, persists therein and hath signed.

(Signed) HENRY THOMAS.

Sworn, taken and acknowledged } before me, in the Insolventcy room, the day, month and year } first above written.	(Signed)
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CHARLES MONDELET.

DEPOSITION OF WILLIAM DARLING.

On the eighteenth day of May, one thousand eight hundred and sixty-eight, personally came and appeared before Mr. Justice C. Monck, one of the judges of the Superior Court, William Darling, of the City and District of Montreal, on behalf of the assignee, who being duly sworn, doth depose and say :

I have been a wholesale hardware merchant for twenty-eight years, and I am the senior member of the firm of William Darling & Co. I have kept our cash book for fifteen years.

I never was a book-keeper, but I understand them thoroughly.

Question.—Look at the new set of books of the said Insolvents, now before you, and do you consider them to be their genuine and original daily books ?

Answer.—With regard to the cash book, I consider it to be a copy from another rough cash book, for no man keeping a cash book and making entries as he received and paid monies daily, could make the entries in the same uniformity of writing, and with the same pen, and with ink constantly of the same kind.

With regard to the other books there is not the same difficulty in making them uniform, for they are written up monthly, instead

of being written up hourly, as would be the case with the cash book, and I can speak with no certainty regarding them.

As regards cash book No. 4—after October, one thousand eight hundred and sixty-two—the same remark made about cash book No. 5 applies to it.

I never heard of a merchant keeping two sets of books.

Question.—Look at the Ledger No. 18, at pages 254, 270, 388, 484, and 568, and state if from that you would understand that a private ledger had been kept by the Insolvents.

Answer.—The entries, and the nature of these entries, show that the said Andrew Macfarlane had a private ledger. It is evident that he had a private ledger in one thousand eight hundred and fifty-eight.

Question.—Look at the cash book No. 4, entries “by real estate and by profit and loss,” and would you not consider those entries irregular and extraordinary?

Answer.—This entry “By real estate” should state by whom and for what real estate the money was paid.

I cannot understand the entries “By profit and loss,” unless the cash was actually stolen or lost otherwise than by bad debts by accident.

I consider that a man who balanced his cash but once in every nine months, could not balance it at all.

I have known Mr. George Parys, the book-keeper of the Insolvents, and he has the reputation of being a thorough book-keeper, and he is an intelligent young man. He was a book-keeper at Robert Weir & Co., wholesale stationers, and Amable Prevost & Co., wholesale dry goods merchants and importers. He must have been a book-keeper for over twelve years.

I am not a creditor of the Insolvents, and further the Deponent sayeth not, and the deposition having been read to him, he declares it contains the truth, doth persist therein and hath signed.

(Signed)

W. DARLING.

Sworn, taken, and acknowledged
before me, the day, month,
and year first above written.

Reappearing this twentieth day of May, one thousand eight hundred and sixty-eight, the witness continues as follows:—And further the deponent sayeth not, and this deposition having being read to him, he declares it contains the truth, persists therein, and hath signed.

(Signed)

W. DARLING

Sworn on the eighteenth day of May, 1868, taken and acknowledged before me in Insolvency room, this twentieth day of the month and year here above written.

S. C. MONK, J.S.C.

DEPOSITION OF EDWARD LUSHER.

On this eighteenth day of May, one thousand eight hundred and sixty-eight, personally came and appeared before Mr. Justice C. Monk, one of the Judges of the Superior Court, on behalf of the assignee, Edward Lusher, of the City and District of Montreal, who being duly sworn doth depose and say:—

I have been in the wholesale grocery business, in New York and Montreal, for the last fifteen years, and I am a member of the firm of B. Hutchins & Co. I was a bookkeeper for about twelve years, both in New York and in Montreal, with divers merchants, and amongst others with Messrs. David Torrance & Co.

Question.—Look at the set of books now before you, belonging to the said Insolvents, and state if in your opinion those books are the genuine daily books of the said Insolvents?

Answer.—The Cash book now before me is certainly not the original cash book kept by the Insolvents. The Journal and Ledger and Bill books are not the original books kept by the Insolvents. I should not place any reliance upon the Bill book.

The Cash book No. 4, from October one thousand eight hundred and sixty-two, up to the end, appears to contain copied entries.

It is not customary for merchants to keep two sets of books, like those now before me ; I never saw it done.

It is so extraordinary to keep two sets of books that a merchant would have no proper object in so doing. Some merchants do keep private Ledger and journals.

Question.—Look at the Ledger No. 18, the following pages 254, 270, 388, 484, and 568, and state if from that you would understand that a private ledger was kept by the Insolvents ?

Answer.—Unquestionably I would.

Question.—Look at page 487 of Ledger No. 18, at “ profit and loss accounts” and would you not understand by that account that a private journal was kept by the Insolvents ?

Answer.—I should infer that there is another journal.

Question.—Look at the Cash book No. 4, entries “ by real estate and by profit and loss,” and would you not consider those entries irregular and extraordinary ?

Answer.—The entry “ by real estate” is a most extraordinary entry, and if not explained shows an intention of fraud. The same answer applies to the entries of “ by profit and loss.”

Question.—What would you say of a wholesale merchant balancing his cash every nine or twelve months ?

Answer.—I should say it was a very irregular and unusual proceeding.

By so doing it would be impossible to arrive at a correct knowledge of his financial position.

Question.—From what you have seen of the books do you think it was ever possible for the Insolvents to make a correct statement of their affairs ?

Answer.—Taking the books as they now appear. that is impossible.

I do not remember ever having seen a more irregularly kept set of books.

Among merchants, balances of the books are made every month and a general statement of affairs is made by some every six months, and by none later than every twelve months.

The cashier balances his cash in some firms every night, some every week, and never later than once a month.

The Insolvents were wholesale dry goods merchants and importers.

I am not a creditor of the Insolvents, and further the Deponent sayeth not, and the Deposition having been read to him, he declares it contains the truth, persists therein, and hath signed.

(Signed,)

E. LUSHER.

Sworn, taken and acknowledged before }
me in the Insolvency room, the day, }
month and year here above written. }

(Signed,)

S. C. MONK.

J. S. C.

DEPOSITION OF WILLIAM LINDSAY.

On this sixteenth day of May, one thousand eight hundred and sixty-eight, personally came and appeared before the Honorable Charles Mondelet, one of the Judges of the Superior Court, William Lindsay, of the City and District of Montreal, commission merchant, on the part of the assignee, who being duly sworn, doth depose and say :

I have been in business as commission merchant in the said city of Montreal for about twenty years, and was before that book-keeper for about eight or nine years, both in Canada and in England.

On the twenty-seventh March last past, I was asked by the committee of the creditors of the Insolvents to make a thorough investigation of the books, and make my report.

Upon seeing the books which were handed to me by the assignee, I at once saw it was an impossibility for me to make an investigation without being furnished with the balance sheets, statements of affairs, and memorandum books referring to certain entries in the cash book. The reason I could not make this investigation was that I found—a most unusual thing with merchants—that two distinct sets of books were kept, and that one of these sets of books had not been posted or journalized for over two years.

I asked Mr. Stewart, the Official Assignee, for the balance sheets, and also the memorandum books ; he said he had never gotten them, but that he would ask Mr. Macfarlane for them.

Not receiving them, I sent for Mr. Macfarlane's bookkeeper, Mr. Parys, who promised to bring them on the following day. He never did so. I have also asked Mr. Macfarlane for them, and he has never furnished them to me, although he said he would get them for me, if Mr. Parys would not bring them.

Mr. Stewart, the Official Assignee, in my presence, has asked Mr. Parys and Mr. Macfarlane for these balance sheets and memorandum books. I know that he has made search for them himself, but I never saw these documents. I considered them indispensable documents to arrive at a thorough knowledge of their affairs, and especially at the explanation of a large amount of money withdrawn from the business in one thousand eight hundred and sixty-seven, per cash book No. 4.

Another difficulty I met in this investigation of the books, was that I did not and do not, consider the books to be genuine, but copies from other books. I am led to this belief from the fact of the writing being so uniform, and the ink of the same colour throughout.

The misplacement of the dates in the cash books particularly, shows to me that they were not the genuine daily cash books.

The books shewn to Henry Thomas and other witnesses, are the same books that have been exhibited to Mr. Parys and the Insolvents.

And further the Deponent sayeth not, and the Deposition having been read to him, he declares it contains the truth, persists therein, and hath signed.

(Signed,) WILLIAM LINDSAY.

Sworn taken and acknowledged
before in me Insolvency
room, the day, month and
year here above written.

(Signed,) CHARLES MONDELET, J.

DEPOSITION OF ADAM HANDYSIDE.

On this fifteenth day of May, eighteen hundred and sixty-eight, personally came and appeared before Mr. Justice Charles Monde-

let, one of the Judges of the Superior Court, Adam Handyside, secretary of the Montreal Mining Company, of the City and District of Montreal, on the part of the assignee, who being duly sworn doth depose and say :

Up to the 27th of February last past, the said Insolvent, Andrew Macfarlane, was holding in the capital stock of the Montreal Mining Company stock to the amount of three thousand two hundred and forty-nine shares, and on that day they were transferred in our transfer book by Thomas Workman, attorney for Andrew Macfarlane, to Henry Archibald, of the firm of Frothingham and Workman, and on the same day, transferred by the said Henry Archibald, to William Kidston & Sons.

On the back of the said certificate of shares, there is a power of Attorney, under the hand and seal of the said Andrew Macfarlane, purporting to be signed on the eighth April one thousand eight hundred and sixty-four, in favor of William Kidston & Sons, in the presence of Alex. Davidson and Robert Macfarlane, giving the said William Kidston & Sons power to transfer the said stock.

Question.—Have you in your possession a power of Attorney from Andrew Macfarlane to Thomas Workman ?

Answer.—No.

Question.—How is it then that you allowed the transfer of the said stock in the transfer book of your Company without the authorization of Andrew Macfarlane ?

Answer.—Because of a power of Attorney from Messrs. Kidston & Sons to Mr. Thomas Workman.

The value of that stock is of two dollars per share.

At the time the said transfer was made, I was not positively aware that Mr. Andrew Macfarlane was an Insolvent,

And further the Deponent sayeth not, and the Deposition having been read to him, he declares it contains the truth, persists therein and hath signed.

(Signed)

ADAM HANDYSIDE.

Sworn, taken and acknowledged)
before me in the Insolvency)
room, the day, month and year)
first above written.

(Signed,)

CHARLES MONDELET, J.

DEPOSITION OF JAY LUGSDIN.

On this seventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight, personally came and appeared, Jay Lugsdin, of the City and District of Montreal, Mercantile Agency, manager, aged twenty-five years, a witness produced on the part of the Assignee, who being duly sworn, deposeth and saith : I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit. I was in the Mercantile Agency of Dun, Wiman & Co., for about ten years, and was a manager of the Branch House of Montreal during the year eighteen hundred and sixty-seven.

The said Mercantile Agency had, and still has, twenty-two offices over the different parts of the commercial world. There is one in London, England, to which all the leading merchants and banks subscribe for information as to the standing and character of their customers.

Question.—During the year (1867) eighteen hundred and sixty-seven had you communication with Andrew Macfarlane with reference to his business matters, and state all you know about this matter.?

Answer.—In the month of February, 1867, Mr. Andrew Macfarlane voluntarily made the following statement to me, as being his true position on the thirtieth November, 1866, which was the day he last balanced his books. He stated his assets to be as follows : Outstandings, thirteen thousand four hundred and ninety-two pounds twelve shillings and a penny. Other accounts, “petty blotter,” £364 16s. 7d. ; promissory notes, £4,786 3s. 2d. ; stock, £28,206 6s. 1d. ; cash in the City Bank, £1,739 3s. 11d. ; cash in the Banque du Peuple, £279 18s. 8d. ; cash on hand, £368 15s. 1d. Total, aside from real estate, &c., £49,237 15s 7d. Real estate, store in St. Paul street, £7,560 0s. 0d ; residence, “ which he says cost £9,719 0s. 0d,” valued at £7,000 0s. 0d. Grand total, £84,227 15s. 7d. Liabilities : to amounts due Kidstons, £16,475 13s. 6d. Other debts and promissory notes, all due in Canada, £5,193 2s. 11d. Total, £21,668 16s. 5d., thus showing an apparent surplus in Halifax currency of £62,558 19s. 2d. Mr. A. Macfarlane gave me to understand that £2,000 0s. 0d. had

been deducted for bad and doubtful debts, and said the amounts due the Messrs. Kidstons had been reduced to £13,930 0s. 0d. He stated the original sum was £16,000 0s. 0d., borrowed in 1864, for seven years, at 5 per cent, as collateral security for which, on the 26th of February, 1864, he specially mortgaged his residence and store. He alleged that the money was forced upon him by the senior Mr. Kidston, now deceased, and that it was not accepted from necessity, but because it would place him in a position to buy for cash from first hands, which he distinctly stated he had done for some time. He stated that the terms on which he got the money were, that no demand could be made for any portion of it till February, 1871, but said he had reduced it as above by disbursements, on account of vessels consigned to him by the Messrs. Kidstons, and also by remittances direct.

This statement was given to me verbally, and in the Insolvent's own office, and no person present except ourselves. He had before him a book, which he opened with a key, and also a paper which appeared to be his last balance sheet, and which was in the book. Mr. Macfarlane had the book opened before him on a sloping table, and I was opposite to him on the other side of the table. Mr. Macfarlane read out to me the figures which I have detailed above, but whether he read from the book, or the paper inside the book, I cannot say.

Question.—After giving you that statement did you try to examine the books, and did Mr. Andrew Macfarlane oppose your doing so ?

Answer.—I say no to both questions. What I have related above is all that occurred between us.

Question.—For what purpose did Mr. A. Macfarlane give you the above statement ?

Answer.—I presume that I might give it out to the world as being his true position.

It is generally known that statements furnished to the Mercantile Agency are entered in the books, and are reported to the subscribers, who ask for them.

I had the above statement entered in the books of the Mercantile Agency.

In entering these statements we are in the habit of always adding our own remarks thereon.

I sent the above statement to the Branch House in London.

Question.—How is it that in making up the divers assets in that statement, there is a deficit of £20,430 0s. 0d.

Answer.—The error occurred by the entry clerk in the Mercantile Agency, who omitted an item of his assets, consisting of mining stocks, &c., and amounting to that sum.

Question.—Did you have any conversation with Mr. Robert Macfarlane with regard to that statement?

Answer.—No.

Question.—Did Mr. Parys ever say to you anything about that statement?

Answer.—No.

As the said Andrew Macfarlane dictated the information above referred to, I then and there wrote it down on a sheet of paper. So far as I remember, when I was in my own office, I recopied the statement, and destroyed the original sheet.

Exhibit marked F. is an extract from the said books of the Mercantile Agency.

Objected to, as not being the best evidence, and as being irregular and illegal. Reserved.

James H. Davison is the clerk who entered the statement into the books of the Mercantile Agency, and to whom I gave the statement to be so entered.

This Mr. Davison was never in the employ of the Insolvents.

Cross-examined without waiver of objection.

Petitioner objects to the cross-examination for the reasons already given and discussed. Reserved.

Question.—State precisely under what circumstances you obtained from the said Andrew Macfarlane the information you refer to?

Answer.—As I have stated.

Question.—Did the said Andrew Macfarlane invite you to come to his office?

Answer.—He did not.

Question.—As he did not invite you, what was it that prompted you to call at the office?

Answer.—So far as I remember, it was to ascertain his opinion of one of his customers living at St. Jean Chrysostôme.

Question.—In what form did you ask him to give you the information you spoke of in your examination in chief?

Answer.—As stated, he voluntarily did it.

Question.—Did you not on the occasion referred to, ask the said Andrew Macfarlane to give you the information about his own affairs, to which you have referred?

Answer.—I did not.

Question.—Did you not represent to him that merchants were in the habit of giving such statements to the Mercantile Agency?

Answer.—I did not.

There is but one office of the Mercantile Agency in Great Britain, and that one is in London.

Question.—What remarks were entered in the book of the Mercantile Agency with reference to the statement which you say you caused to be entered therein?

Answer.—That I decline to say, as the remarks are confidential and given only to subscribers who ask for information.

The witness having been heard on his objection to answer, it is ordered by the Court that he answer the question.

Answer.—Having gone to the office of the Mercantile Agency, in order to copy out the said remarks, the manager in charge refused to allow me to do so, and handed me the note which I now produce marked Z.

Question.—Can you state from memory the substance of the said remarks?

Answer.—No. Nor can I state what their purport or effect was, as I left the said institution about two months ago.

Question.—How was the firm of the insolvents Andrew Macfarlane & Co., rated in the books of the said Mercantile Agency last year?

Answer.—They were marked blank.

Question.—What was that blank mark intended to signify?

Answer.—There is no signification to it.

Question.—Do you mean to say that the fact of a blank being left opposite their names, means nothing at all?

Answer.—Yes.

Question.—What would any subscriber to the said Agency naturally conclude with regard to the mercantile standing of a house thus marked blank?

Answer.—Can't say.

The printed book of the said Mercantile Agency thus containing a blank mark opposite the name of the said Andrew Macfarlane & Co., was published in the month of July last.

Question.—How was the said firm of Andrew Macfarlane & Co. rated in the book published by the Mercantile Agency for the year 1866 ?

Answer.—So far as I remember 2—1½.

Question.—What meaning was intended to be conveyed by that mark ?

Answer.—Worth over fifty thousand dollars, and in good credit.

Question.—Would you consider a house rated in blank in the said book to be a house in good credit, particularly so when in the book of the year previous, the same house was rated 2—1½ ?

Answer.—I cannot say.

Question.—From your experience as a manager in the said Mercantile Agency, what opinion would you entertain as to the standing of a house thus marked ?

The petitioner objects to answering this kind of evidence as bearing upon statements not given by the Insolvents, nor upon facts arising from the examination in chief, nor upon matters concerning the estate of the Insolvents. Objection overruled.

Answer.—The opinion that I entertain would be that their standing is left over for further consideration.

Question.—Does not a blank such as referred to, cast suspicion on the standing of a house which had been previously rated 2—1½ ?

Answer.—It is not so intended.

Question.—What is then really intended by such a blank mark ?

Answer.—The subscribers understand it as meaning nothing.

Question.—Is it not true that you borrowed from the said Andrew Macfarlane & Co., on or about the first of February, 1867, the sum of seven hundred and sixty-seven dollars ?

Objected to as irrelevant. Reserved.

Answer.—I borrowed from them the sum of \$800, less interest of 9 per cent for four months, for which I gave my promissory note, endorsed by P. D. Browne, a wealthy man, which was subsequently renewed, and the renewal paid six weeks before due. I cannot say whether I borrowed the said money before or after I obtained the statement of the Insolvents referred to in my examination in chief.

Question.—With reference to the said borrowing or the renewing of the said note, had not you and the said Andrew Macfarlane some discussion in regard to the rating of his firm by the Mercantile Agency ?

Answer.—I most emphatically answer no.

Re-examined under reserve of objections.

Question.—When you said in your examination that you made the remarks upon the statement of the affairs of the Insolvents furnished to you by Mr. Andrew Macfarlane, did you make those remarks at or about the time the said statement was furnished or after, and how long after ?

Answer.—Some short time afterwards. And, further, the deponent sayeth not, and the deposition having been read to him, he declares it contains the truth, persists therein and hath signed.

(Signed,)

J. LUGSDIN.

Sworn, taken and acknowledged }
before me at enquete, the day, }
month and year here above }
written.

(Signed,)

CHARLES MONDELET, J.

EVIDENCE ADDUCED BY THE INSOLVENTS.

DEPOSITION OF JAMES HEDLEY.

On this ninth day of May, one thousand eight hundred and sixty-eight, personally came and appeared before Mr. Justice C. Mondelet, James Hedley, of the City and District of Montreal, who, being duly sworn on the Holy Evangelists, doth depose and say :

The Petitioner, A. B. STEWART, objects to the examination of this witness, because he has been ordered to appear upon the petition of the Insolvents, and that the examination now going on being preliminary, for and on behalf of the creditors generally, under the section 10, paragraphs 2 and 4 of the Insolvent Act of 1864, no witness can be summoned at the request of the Insolvents.

I am the person who wrote the letter marked with the letter Z, filed in this cause on the 7th instant by Jay Lugsdin, a witness then under examination on the part of the Petitioner.

My authority for writing that letter was that I am the acting manager in Montreal of the Mercantile Agency, carried on by Dun, Wiman & Co. The paper marked F, also produced by the said Jay Lugsdin, whilst so under examination, having been shown to me, I declare that the said is a true copy of certain entries in the books of the said Mercantile Agency, which were therein recorded by James H. Davison, a clerk in the employ of the said firm. The said paper F is also the handwriting of the said J. H. Davison, and was carefully compiled by me with the original entries in the said books.

Question.—What remarks were recorded in the said books by the said Mercantile Agency with reference to the statement contained in the said paper F ?

Answer.—I cannot give them orally, but I can give an extract in writing, and I now produce such extract, which also contains the contents of the said paper F. The extract which I now produce is marked with the letter X. It was copied out of the said book by one of the clerks of the office, and carefully compared by me. I declare that the said paper X is a true copy of all the entries in the books of the said Mercantile Agency, with reference to the statement paper F ; at least I know of no other entries having reference to the said statement.

I believe the information contained in the said paper X was furnished to the Branch of the Mercantile Agency in London, England.

Question.—What do you understand to be the meaning in the printed books of reports furnished by the Mercantile Agency to their subscribers of a blank rating opposite the name of Andrew Macfarlane & Co, in the book for 1867, whereas in the previous year, they were rated 2—1½?

Answer.—Properly there should be no such rating as a blank, and it only occurs, so far as my experience goes, in cases where the affairs of a party or firm are undergoing examination by the agency. Several instances have occurred in which we were unable to satisfy ourselves in time for the publication of the book, and therefore left the rating blank.

Question.—Would you not consider that such a blank rating, following such a rating as 2—1½, would indicate considerable doubt as to the credit or standing of the firm thus marked?

Answer.—I would not, as it might occur, as has previously been the case, through typographical error. I refer to the significance of the key for one thousand eight hundred and sixty-seven, and not to the one proposed to be published this year, as then the blank mark will mean something.

Of course a blank mark, such as was in the book of one thousand eight hundred and sixty-seven, gave no rating whatever to Andrew Macfarlane & Co.; and any one wanting to know the exact opinion of the Mercantile Agency with regard to their standing, and having a right to the information, could obtain precise information by application to the office, where our detailed report might be found.

I know the said Jay Lugsdin, and I am aware that he was discharged from the establishment of the said Mercantile Agency, in consequence of his having neglected (so far as I have understood) to advise the agency of facts in his possession with reference to the said insolvents. And further the deponent sayeth not, the deposition having been read to him, he declares it contains the truth, persists therein and hath signed.

(Signed), JAMES HEDLEY.

Sworn, taken and acknowledged before
me, in Insolvency Court, the day,
month and year hereabove written. }

(Signed,) CHARLES A. MONDELET, J.

DEPOSITION QF ERASTUS WIMAN.

On the ninth day of May, Eighteen Hundred and Sixty-eight, personally appeared before the Honorable Charles Mondelet, Judge of the Superior Court, Erastus Wiman, of New York City, in the State of New York, one of the States of America, one of the partners of the Mercantile Agency, who, being duly sworn on the Holy Evangelists, doth depose and say :—

The Petitioner, A. B. Stewart, objects to the examination of this Witness, because he has been ordered to appear upon the Petition of the Insolvents, and that the examination now going on being preliminary, for and on behalf of the Creditors, generally under the Section 10, paragraph 2 and 4 of the Insolvent Act of 1864 ; no witness can be summoned at the request of the Insolvents objection overruled.

The Petitioner excepts to the ruling of the Honorable Judge.

Jay Lugsdin, who has been examined in this cause as a witness, was our Manager here from September, 1866, to about the first of March last. He was discharged because he borrowed Eight Hundred Dollars from the Insolvents, and because he had neglected to advise our London office with information in relation to them, which had come to his knowledge until that information became comparatively valueless to the London office.

The entries of the Books of the Mercantile Agency, of which the Exhibit, fyled this day by Mr. James Hedley, is a copy, were not entered on our Books until after the 25th of July, 1867.

It was the business of the said J. Lugsdin to cause to be recorded the contents of paper F, produced at the time of his examination, when he received it, which, according to his own account, as stated in his deposition, was in February, 1867. It was also his duty, according to positive instructions, to have sent this statement to London, together with the report thereon, not later than the first of June, 1867, in order to be given to subscribers before Mr. Macfarlane could purchase goods or open credits in that market. I have to state however, that in consequence of frequent applications from London for information, to Mr. Lugsdin, in relation to this house, and his failure to make a report thereupon, created some suspicion in my mind and induced me to send a report myself about the first of June last, to the following effect, viz :—“ The position of “ this house has not improved this last year or two---their trade has

“not been prosperous and they are not supposed to have gained much, if anything. They are largely in the hands of a Glasgow house, “Kidstons,” who hold a mortgage over all their real Estate for \$64,000.00, which is quite as much as the property would realize. This, with other circumstances, and the well-known character of the senior member of the firm for looking out for his own interests, creates a feeling of distrust regarding them. “They are in declining local credit.”

A copy of this report was sent to Mr. Lugsdin from New York, but was never entered on the Books in Montreal, but is entered in our London records. There is no entry in our Montreal books respecting the said firm from June, 1865, to July, 1867, when the information contained in Exhibit X, was recorded. It was clearly his duty to have made a report in the meantime, and it was also his duty to have entered my report of June first, (as above) which was sent to him for that purpose---his failure to do so was another cause for his discharge.

Cross-examined under reserve of objection---

My report must have reached England between the 12th and 15th of June, as I received a letter on the 22nd of June, acknowledging the receipt of my report, and stating that there had been numerous enquiries about Mr. Macfarlane, who was then buying in the English market.

Mr. J. Lugsdin's report, I understand, was not sent to England before the 6th of August, and could not have reached London before the middle of August, 1867.

I made my own report of June 5th, (1867,) without conferring with Mr. Lugsdin. Though residing in New York, I maintain a constant watchfulness of our business in Canada, and our managers and employees, here and elsewhere, are under constant surveillance.

And further, the Deponent sayeth not, and the deposition having been read to him, he declares it contains the truth, persists therein, and hath signed

(Signed,)

ERASTUS WIMAN.

Sworn, taken and acknowledged before me in the Insolvency Room, on the day, month and year here above written.

(SIGNED,)

CHARLES MONDELET, J.

EXHIBITS.

EXHIBITS FILED WITH MR. PARYS' DEPOSITION.

A.

ANDREW MACFARLANE, Montreal, Dry Goods, July, 1867, submitted a statement showing his position on 30th Nov., 1866, to be as follows:—Assets; outstandings, £13,492 12s. 1d; Other accounts, Petty Blotter, £364 16s. 7d; Promissory Notes, £4,786 3s. 2d; Stock, £28,206 6s 1d; Cash in City Bank, £1,739 3s. 11d; Cash in People's Bank, £279 18s. 8d; Cash on hand. £368 15s. 1d; Total, aside from Real Estate, &c., £49,237 15s. 7d. Real Estate—Store St. Paul street, £7,560; Residence, which he says cost £9,719, valued at £7,000. Grand Total, £84,227 15s. 7d. Liabilities—To amount due Kidstons, £16,475 13s. 6d.; other debts and promissory notes, all due in Canada, £5,193 2s. 11d. Total, £21,668 16s. 5d. Apparent surplus in Halifax currency, £62,558 19s. 2d.

GENERAL STATEMENT OF ANDREW MACFARLANE & CO.'S AFFAIRS.

Dr.

MONTREAL, February, 1868.

Cr.

LIABILITIES.		£	s.	d.
Debts due in England as per statement, (this does not include those which are secured by mortgage).....	24,057	14	4	
To balance carried down—being surplus.....	13,635	2	0	
	37,692	16	4	
ASSETS.		£	s.	d.
Outstanding debts as per list.....	31,792	11	6	
Due by Daniel McNevin's estate.....	2,666	19	7	
Gregor McGregor, Auctioneer :				
Stock on hand per his statement.....	\$5,297.67			
Goods not accounted for by him.....	4,286.15			
	<u>\$9,583.82</u>			
Deduct amount due him as per his account current.....	\$5,993.79	897	10	2
Balance favor of A. Macfarlane & Co..	\$3,590.03	2,335	15	1
Stock of goods on hand as per inventory.....		<u>£37,692</u>	<u>16</u>	<u>4</u>
By balance brought down.....	£13,635	2	0	
Loss on goods sold by auction as per statement...	20,883	11	4	
Had it not been for the <i>dead loss</i> on goods sold by auction, there would have been a surplus of..	34,518	13	4	

C

STATEMENT OF THE VALUE OF GOODS AT COST PRICE, SENT TO AUCTION AND SOLD BY THE FOLLOWING AUCTIONEERS.

Benning & Barsalou, Montreal.....	£30,045	11	5
G. McGregor, Montreal.....	18,549	12	4
G. F. Gibson & Co., Quebec.....	7,455	5	1
Wakefield, Coate & Co., Toronto.....	4,926	4	8
Wm. Murray, Kingston.....	3,333	8	4
Amos Rowe, Ottawa.....	1,537	14	5
N. G. Price, Hamilton.....	181	4	4
	£66,029	0	7
Deduct 1-7 to reduce the value to 50 per cent, advance on sterling cost.....	9,432	14	5
Total value at cost price here.....	£56,596	6	2

NET PROCEEDS OF ABOVE.

Benning & Barsalou.....	£16,217	0	6
G. McGregor.....	10,718	19	4
G. F. Gibson.....	3,710	3	2
Wakefield, Coate & Co.....	2,976	19	3
Wm. Murray.....	1,155	4	3
Amos Rowe.....	840	0	4
N. G. Price.....	94	8	0
	35,712	14	10
Amount of Loss on goods sold at auction....	£20,883	11	4

EXHIBIT **Z**, FYLED WITH LUGSDIN'S DEPOSITION.THE MERCANTILE AGENCY,
Dun, Wiman & Co.

MONTREAL, MAY 7TH, 1868.

J. LUGSDIN, Esq.,

Dear Sir,—In reply to your application for access to our records for the purpose of copying therefrom our remarks upon certain parties, we beg to say that our instructions from New-York are positive not to allow any such information to be communicated except privately to Subscribers.

We are compelled therefore to decline.

Respectfully yours

(Signed) DUN, WIMAN & CO.,
PR. JAMES HEDLEY.EXHIBIT **F**, FYLED WITH LUGSDIN'S DEPOSITION.

ANDREW MACFARLANE & Co.,

MONTREAL.

Submitted his statement shewing his position on 30th Nov., 1866, to be as follows:—Assets: Outstanding, £13,492 12s. 1d.; Other accounts (potty blotter), £364 16s. 7d.; Promissory Notes, £4,786 3s. 2d.; Stock, £28,206 6s. 1d.; Cash in City Bank, £1,739 3s. 11d.; Cash in People's Bank, £279 18s. 8d.; Cash on hand, £368 15s. 1d.: Total, aside from Real Estate,

&c., £49,237 15s. 7d. Real Estate—Store on St. Paul St., £7,560 0s. 0d.; Residence (which he says cost £9,719 0s. 0d.) valued at \$7,000; Grand Total, £84,227 15s. 7d. Liabilities: Amount due Kidstones, £16,475 13s. 6d.; Other debts and Promissory Notes all due in Canada, £5,193 2s. 11d.: Total, £21,668 16s. 5. Apparent surplus in Halifax currency, £62,558 19s. 2d. * Mr. Macfarlane gives us to understand that £2,000 has been deducted for bad and doubtful debts, and says the amount due Messrs. Kidstone has been reduced to £13,930, the original sum is £16,000 borrowed in 1864 for 7 years, at 5 per cent, as collateral security for which on the 26th February, 1864, he specially mortgaged his residence and store. He alleges that the money was forced upon him by the senior Mr. Kidstone, now dead, and was not accepted from necessity; but because it would place him in a position to purchase for cash from first hands, which he distinctly states he has done for some time. Terms on which he got the money state, that no demand can be made for any portion of it until February, 1871—but says he has reduced it as above by disbursements on account of vessels consigned to him by the Messrs. Kidstone, and also by remittances direct.

(*) An error of £20,430 is apparent to any one who adds up these assets. Mr. Macfarlane's surplus, according to the enumerated items, is not £62,558 19s. 2d. but £42,128 19s. 2d. We placed the statement upon the Books, however as given to us.

On the reverse of this exhibit is the following :

OFFICE OF THE MERCANTILE AGENCY,
(for the promotion and protection of trade)
Union Buildings, 45 St. Francois Xavier St.,
DUN, WIMAN & CO., proprietors.

MONTREAL, JAN. 25TH, 1868.

W. LINDSAY, Esq.,

The information given on this sheet, in answer to your enquiry, is, you will remember, communicated in the strictest confidence, to be used as a private memorandum for your guidance in your own business, and not to be communicated to any other person or persons.

The actual verity of this, or any other information obtained through the "Mercantile Agency" is in no manner guaranteed by the said Agency or the Proprietors thereof, for, notwithstanding every effort, mistakes and misapprehensions may occasionally occur.

(Signed) DUN, WIMAN & CO.

EXHIBIT X, PRODUCED AND FILED BY JAS. HEDLEY.

A. MCFARLANE & Co.,

MONTREAL.

July, 1867, Submitted a statement showing his position on 30 November 1866, to be as follows:— Assets: Outstandings, £13,492 12s. 1d.; Other accounts (petty blotter) £364 16s. 7d.; Promissory Notes, £4,786 3s. 2d.; Stock, £28,206 6s. 1d.; Cash in City Bank, £1,739 3s. 11d.; Cash in People's Bank, £279 18s. 8d.; Cash on hand, £368 15s. 1d.; Total, aside from Real Estate, &c., £49,237 15s. 7d.; Real Estate, Store on St. Paul Street, £7,560; Residence, which he says cost £9,719; valued at £7,000; Grand total £84,227 15s. 7d.; Liabilities: to amount due Kidstones, £16,475 13s. 6d.; Other debts and promissory notes, all due in Canada, £5,193 2s. 11d.; Total, 21,668 16s. 5d.; Apparent surplus in Halifax currency, £62,558 19s. 2d.; Mr. Macfarlane gives us to understand that £2,000; has been deducted for bad and doubtful debts, and says the amount due Mr. Kidstone is reduced to £13,930.; The original sum is £16,000, borrowed in 1864 for 7 years at 5 per cent. as collateral security for which, on the 26th February, 1864, he specially mortgaged his store and residence. He alleges that the money was forced upon him by the Senior Mr. Kidstone, now deceased, and was not

accepted from necessity, but because it would place him in a position to buy for cash from first hands, which he distinctly states he has done for some time. The terms on which he got the money, set out that no demand can be made for any portion of it until February, 1871. But says he has reduced it as above by disbursements on account of vessels consigned to him by Messrs. Kidstone, and also by remittances direct, states that it is optional with him whether he buys through Kidstones or not, and thinks the fact that they still consign their vessels to him should satisfy outsiders of continued confidence in him; but we doubt this, and believe that Messrs. Kidstone still consign vessels to him purely from policy, as it does not tend to awaken suspicion that they are uneasy about their debt, and at the same time diminishes their claim by McFarlane's disbursements on account of their vessels. His real estate would not realise any more than the mortgage; his stock is old and ill-assorted, and his estimate of it could be much reduced. His mining stock, &c., are of problematical value, and inquiries at numerous sources all say his surplus is greatly exaggerated. Their trade the past season has not been prosperous, and their class of customers generally are of a questionable class, from whom they exact big profits, by which they "cut their own throats," not many caring to deal with them a second time. They have two Bank accounts; and we have heard of their recent "bons" being on the street. This, with other circumstances, and the well known character of the senior member for looking out for his own interest, creates a feeling of distrust, and we decline to recommend as a desirable connection.

The supposition is that any goods sold them now will only go to reduce Kidstone's debt.

On the reverse of this exhibit is the following:

Office of the Mercantile Agency (for the promotion and protection of trade), Union Buildings, 45 St. François Xavier Street, Dun, Wiman & Co., proprietors. Montreal, 186

The information given on this sheet in answer to your inquiry, is, you will remember, communicated in the strictest confidence, to be used as a private memorandum for your guidance in your own business, and not to be communicated to any other person or persons. The actual verity of this, or any other information obtained through the Mercantile Agency is in no manner guaranteed by the said Agency or the proprietors thereof, for notwithstanding every effort, mistakes and misapprehensions may occasionally occur.

(Signed)

DUN, WIMAN & CO.

EXHIBIT H, FILED WITH ANDW. MACFARLANE'S DEPOSITION, LIST OF REAL ESTATE OWNED BY HIM.

MEMORANDUM.

Warehouses in St. Paul Street, Montreal.

Hill Home, in St. Antoine " "

One lot of land in Hawkesbury village.

One lot of land, Arthabaska station.

One lot of land, Mile End, Montreal.

One lot of land No. 15, Township of Hamilton, County of Bonaventure. { Held as security by Mr.

One lot of land No. A., " " " { Johnston Thompson for

One lot of land No. 1, " " " { payment of his pro-

One lot of land No. 38, " " " { missory notes granted

Warehouse fixtures and tables. { to me.

Office furniture.

Two iron safes.

Montreal mining shares.

Y Z taken from Salary Book, furnished to the Mercantile Agency and referred to in the insolvents' deposition.

ROUGH SKETCH OF ANDREW MACFARLANE & CO.'S AFFAIRS.

Dr.

Cr.

	£	s.	d.
To amount in full, due Wm. Kidstone & Sons of Glasgow, £13,480 2s. 0d. stg., 10 per cent premium.....	16,475	13	6
To other Debts and Promissory Notes.....	5,193	2	11
To balance carried down—surplus.....	27,568	19	2
	<u>49,237</u>	<u>15</u>	<u>7</u>

	£	s.	d.
By amount of good debts per Ledger.....	13,492	12	1
Do do Petty Blotter.	364	16	7
Do Promissory Notes on hand.....	4,786	3	2
Stock on hand.....	28,206	6	1
By cash balance in City Bank, \$6956.78.....	1,739	3	11
Do do La Banque du Peuple, \$1119.24	279	18	8
By cash on hand.....	368	15	1
	<u>49,237</u>	<u>15</u>	<u>7</u>

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Dec. 1, 1866—By balance brought down to the good this day..... £27,568 19 2

ADD PROPERTIES, &c., &c.

Store in St. Paul street	£ 7,560	0	0
Private residence cost £9719, value	7,000	0	0
Other property	1,670	0	0
Mining stock, shares, &c., 3249 shares 18,760	0	0	£34,990 0 0
Halifax currency.....	£62,558	19	2

N.B.—The result of the above preliminary investigation induced the creditors to take some further course against the Insolvents. On the 9th day of June, a petition was presented, praying for an order to obtain the delivery by the Insolvents of certain Books, papers and monies alleged to be retained and withheld by them, and that in default of their so doing they shall be imprisoned, as provided for under the Insolvent Act. As soon as the issue and all the proceedings on the said Petition shall be fully determined, PART II of this Insolvency case will be published for the information of the creditors of the Insolvents.

